

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371
www.science.house.gov

*No final response
for Michael McCaul*

August 31, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

On December 17, 2014, the U.S. Environmental Protection Agency (EPA) issued its proposed rule for ozone National Ambient Air Quality Standards (NAAQS). The proposed rule would set more stringent standards, lowering the primary standard from the current 75 parts per billion (ppb) to a range of 65 to 70 ppb. If enacted, this rule is likely to be the costliest rule EPA has ever proposed.¹

We are concerned that EPA may not have properly analyzed the underlying scientific issues that have been raised since the official comment period for the rule has closed. These issues include serious concerns raised about background ozone and the reliance on a single study as the basis for setting the proposed standard. The American people deserve a thorough and complete analysis of this proposed rule.

The Committee is concerned about the impact of background ozone on the attainability of EPA's proposed ozone standard across the entire United States. Background ozone comes from both natural sources and foreign emission sources.² As EPA admits its proposed rule:

[T]here is no question that, as the levels of alternative prospective standards are lowered, background will represent increasingly larger fractions of total O₃ levels and may subsequently complicate efforts to attain these standards.³

¹ <http://www.nam.org/Newsroom/Press-Releases/2015/02/NAM--Proposed-Ozone-Rule-Still-The-Most-Costly/>

² <http://www.asl-associates.com/natural.htm>

³ Federal Register, Vol. 79, No. 242 75383

The Honorable Gina McCarthy
 August 31, 2015
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In testimony before the Committee and in response to follow-up questions from Committee Members, Dr. Allen Lefohn, an expert on ozone and a past Executive Editor of the journal *Atmospheric Environment*, indicated that the large amount of emission reductions required to meet EPA's proposed lower ozone standard highlights the importance of background ozone levels throughout the U.S.⁴ Dr. Lefohn also noted that ozone formed from background sources across the U.S. predominates during the spring months when anthropogenic sources have a much smaller impact.⁵ We are concerned about modeling results that indicate that exceedances of the proposed ozone standard will occur during the springtime, even when emissions are dramatically reduced across the U.S.⁶ EPA's recent proposal⁷ to extend the ozone-monitoring period to include the month of March will identify violations of the proposed standard that are associated with uncontrollable factors, which is especially concerning.⁸ Furthermore, the locations affected by the aforementioned monitoring season change can appear anywhere across the U.S., creating compliance issues for the entire country, not exclusively limited to the western U.S.⁹

In addition to concerns related to background ozone, the Committee notes that EPA's proposed rule places the greatest weight on controlled human exposure studies, citing significant uncertainties with epidemiologic studies:

[T]he effects reported in controlled human exposure studies are due solely to O₃ exposures, and interpretation of study results is not complicated by the presence of co-occurring pollutants or pollutant mixtures (as is the case in epidemiologic studies). Therefore, she places the most weight on information from these controlled human exposure studies.¹⁰

Of these human exposure studies, however, it appears that only *one* controlled human exposure study, published in 2009 by Schelegle et al., shows effects that may be considered adverse at ozone concentrations below the current standard.¹¹ The Schelegle study found small, reversible impacts at ozone concentrations roughly equivalent to 72 ppb.¹² EPA's proposed rule notes that controlled human exposure studies at lower ozone concentrations (60 and 63 ppb) "did not show statistically significant increases in respiratory symptoms compared to filtered air controls."¹³

⁴ <http://docs.house.gov/meetings/SY/SY00/20150317/103159/HHRG-114-SY00-Wstate-LefohnA-20150317.pdf>

⁵ H. Comm. on Science, Space and Technology, *Reality Check: The Impact and Achievability of EPA's Proposed Ozone Standards*, 114th Congress (Mar. 17, 2015), Questions for the Record, Dr. Allen Lefohn

⁶ Ibid

⁷ <http://www.epa.gov/ttn/naaqs/standards/ozone/data/Rice-2014-O3MonitoringSeasonAnal-EPA-HQ-OAR-2008-0699-0383.pdf>

⁸ H. Comm. on Science, Space and Technology, *Reality Check: The Impact and Achievability of EPA's Proposed Ozone Standards*, 114th Congress (Mar. 17, 2015), Questions for the Record, Dr. Allen Lefohn

⁹ Ibid

¹⁰ 75288, Federal Register, Vol. 79, No. 242

¹¹ Schelegle et al., 6.6-Hour Inhalation of Ozone Concentrations from 60 to 87 Parts per Billion in Healthy Humans, *Am J Respir Crit Care Med*. 2009 Aug 1;180(3):265-72.

¹² Ibid

¹³ 75304, Federal Register, Vol. 79, No. 242

The Honorable Gina McCarthy
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Based on this evidence, the proposal states that the Administrator concludes that the controlled human exposure studies "strongly support setting the level of a revised [ozone] standard no higher than 70 ppb."¹⁴

However, the 2009 Schelegle et al. study contains serious deficiencies that were not discussed in the proposed rule. For example, this study does not replicate key results from previous peer-reviewed studies, and another peer-reviewed study¹⁵ has raised questions about the lack of consistency between Schelegle's results and the two studies by Adams et al (2003, 2006).¹⁶

We noted that there was a relative lack of coherence of the 70 and 80 ppb experiments reported by Schelegle et al. (2009) compared with the other 4 studies, as well as an inconsistency of response by subjects.¹⁷

The Committee is concerned with such a heavy reliance on one potentially flawed study as basis for EPA's proposed rule, and believes that these concerns warrant further deliberation before EPA finalizes the rule.

The aforementioned concerns raise many questions about the necessity and validity of enacting a new, more stringent ozone NAAQS rule. In order to assist the Committee with its oversight, please provide the following documents, in electronic format:

1. All documents and communications referring or relating to EPA's analysis of the influence of background ozone in the springtime on the attainment of a lower ozone standard throughout the entire United States.
2. All documents and communications referring or relating to EPA's analysis of the relationship between background ozone and the anthropogenic emissions reductions that will be required during both the summer and the spring to attain the proposed lower standards.
3. All documents and communications referring or relating to any plan or strategy to address the influence of background ozone on the attainment of a lower ozone standard.
4. All documents and communications referring or relating to EPA's analysis of estimates for mortality and morbidity health risk that were influenced by background ozone and also by anthropogenic sources, as ozone emissions are reduced.

¹⁴ 75304, Federal Register, Vol. 79, No. 242

¹⁵ Lefohn AS, Hazucha MJ, Shadwick D, Adams WC., "An alternative form and level of the human health ozone standard", *Inhal Toxicol.* 2010 Oct;22(12):999-1011

¹⁶ Adams W.C. Comparison of chamber 6.6-h exposures to 0.04-0.08 ppm ozone via square-wave and triangular profiles on pulmonary responses. *Inhal Toxicol* 2006;18:127-136

Adams W.C. Comparison of chamber and face-mask 6.6-hour exposure to 0.08 ppm ozone via square-wave and triangular profiles on pulmonary responses. *Inhal Toxicol* 2003;15:265-281

¹⁷ Lefohn AS, Hazucha MJ, Shadwick D, Adams WC., "An alternative form and level of the human health ozone standard", *Inhal Toxicol.* 2010 Oct;22(12):999-1011

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 August 31, 2015
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5. All documents and communications referring or relating to EPA's analysis of the influence of background ozone and anthropogenic sources on lung function risk estimates.
6. All documents and communications referring or related to the 2009 Schelegle et al. study.
7. All documents and communications between EPA and the Office of Management and Budget (OMB) regarding background ozone issues and the 2009 Schelegle et al study.
8. All documents and communications between EPA and outside groups referring or related to the 2009 Schelegle et al study.

Because the rule must be finalized by October 1, 2015, please provide responses as soon as possible, but no later than 5:00 p.m. on Monday, September 14, 2015. When producing documents to the Committee, please deliver production sets to the following locations:

- Majority Staff of the House Science Committee in Room 2321 of the Rayburn House Office Building
- Minority Staff of the House Science Committee in Room 394 of the Ford House Office Building

If you have any questions about this request, please contact Richard Yamada or Joe Brazauskas of the Science, Space, and Technology Committee staff at 202-225-6371. Thank you for your attention to this matter.

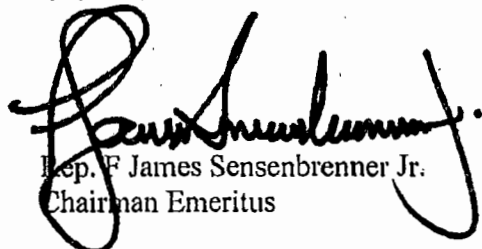
Sincerely,



Rep. Lamar Smith
 Chairman



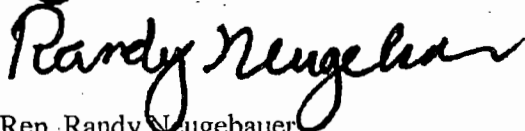
Rep. Frank Lucas
 Vice Chairman



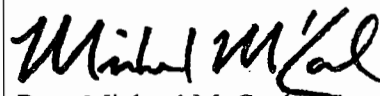
Rep. F. James Sensenbrenner Jr.
 Chairman Emeritus



Rep. Dana Rohrabacher
 Member of Congress



Rep. Randy Neugebauer
 Member of Congress



Rep. Michael McCaul
 Member of Congress

The Honorable Gina McCarthy
August 31, 2015
Page 5

Mo Brooks

Rep. Mo Brooks
Member of Congress

Jim Bridenstine

Rep. Jim Bridenstine
Chairman
Subcommittee on Environment

Bill Johnson

Rep. Bill Johnson
Member of Congress

Steve Knight

Rep. Steve Knight
Member of Congress

Bruce Westerman

Rep. Bruce Westerman
Member of Congress

Darry Loudermilk

Rep. Darry Loudermilk
Chairman
Subcommittee on Oversight

Randy Hultgren

Rep. Randy Hultgren
Member of Congress

Randy K. Weber

Rep. Randy Weber
Chairman
Subcommittee on Energy

John Moolenaar

Rep. John Moolenaar
Member of Congress

Brian Babin

Rep. Brian Babin
Chairman
Subcommittee on Space

Gary Palmer

Rep. Gary Palmer
Member of Congress

Ralph Lee Abraham

Rep. Ralph Lee Abraham
Member of Congress

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member, House Committee on
Science, Space and Technology

MICHAEL T. McCAUL
10TH DISTRICT, TEXAS

FRESHMAN REPRESENTATIVE TO HOUSE
REPUBLICAN LEADERSHIP

COMMITTEE ON
HOMELAND SECURITY

COMMITTEE ON
INTERNATIONAL RELATIONS

COMMITTEE ON SCIENCE

AL-06-001-0775

Congress of the United States
House of Representatives
Washington, DC 20515-4310

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AUSTIN OFFICE
903 SAN JACINTO, SUITE 320
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(512) 473-2357

BRENNHAM OFFICE
2000 SOUTH MARKET, SUITE 303
BRENNHAM, TX 77833
(979) 830-8497

KATY OFFICE
1550 FOXLAKE, SUITE 114
HOUSTON, TX 77084
(281) 398-1247

TOMBALL OFFICE
TOMBALL ROSEWOOD PROFESSIONAL BUILDING
990 VILLAGE SQUARE, SUITE B
TOMBALL, TX 77375
(281) 255-8372

June 28, 2006

The EPA
Office of Grants
Mail Code 3903
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Ms. Durrett:

I would like to express my support for The Regeneration Project's grant application, EPA OAR-CPPD-06-04: "Consumer Education About Reducing Greenhouse Gas Emission Through Awareness and Use of Energy-Efficient Products and Practices."

In preparing the grant application, Mr. Tutt cited many factors contributing to the need for this funding, especially concerning energy conservation and efficiency. He hopes to not only increase the level of knowledge about energy efficiency, but will also offer concrete ways in which people of faith can live out their commitment to stewardship of resources through the use of energy efficient products in both their homes and their houses of worship.

I ask that you give this grant application your most thoughtful and serious consideration. If you need additional information, please contact Thomas Brown in my Austin district office at (512) 473-2357, or feel free to call Reverend Tutt at (512) 218-8110.

I would very much appreciate your acknowledging receipt of this letter with a response to my Austin district office at 309 San Jacinto, Suite 320, Austin, TX 78701.

Thank you very much for your time and attention to this matter. Please do not hesitate to contact me if I may be of assistance as you make your determinations.

Sincerely,



Michael T. McCaul
Member of Congress

MTM: vm



06-001-0775

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 01 2006

OFFICE OF
AIR AND RADIATION

The Honorable Michael T. McCaul
Member, U.S. House of Representatives
309 San Jacinto, Suite 320
Austin, Texas 78701

Dear Congressman McCaul:

Thank you for your letter of June 28, 2006 expressing support for the Regeneration Project's application to receive funding from the U.S. Environmental Protection Agency (EPA) under grant opportunity EPA-OAR-CPPD-06-04 "Consumer Education about Reducing Greenhouse Gas Emissions Through Awareness and Use of Energy-Efficient Products and Practices." Your letter has been included as part of their overall application.

As this is a competitive solicitation, all applications submitted will be given equal review and consideration. Final award decisions will be made after the reviewers convene a technical evaluation panel to rate and rank the eligible applications. Applicants will be notified of EPA's decisions on funding after the solicitations have been approved.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Ronna Landy, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3109.

Sincerely,

A handwritten signature in black ink, appearing to read "W. L. Wehrum", is written over a horizontal line.

William L. Wehrum
Acting Assistant Administrator

AL-09-001-1088

No enclosures

MICHAEL T. McCAUL
10TH DISTRICT TEXAS

COMMITTEE ON
HOMELAND SECURITY
RANKING MEMBER, SUBCOMMITTEE ON
INTELLIGENCE, INFORMATION SHARING,
AND TERRORISM RISK ASSESSMENT

COMMITTEE ON FOREIGN AFFAIRS

COMMITTEE ON SCIENCE AND TECHNOLOGY

REPUBLICAN POLICY COMMITTEE

ASSISTANT REPUBLICAN WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-4310

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BRENNHAM, TX 77833
(979) 830-8497

KATY OFFICE
1550 FOXLAKE, SUITE 125
HOUSTON, TX 77064
(281) 298-1247

TOMBALL OFFICE
TOMBALL ROSWUDG PROFESSIONAL BUILDING
993 VILLAGE SQUARE, SUITE B
TOMBALL, TX 77075
(281) 255-9372

July 23, 2009

SENT VIA FACSIMILE: 202/501-1519

Mr. Joyce Frank
Acting Associate Administrator for
Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Room 3426 ARN
Washington, DC 20460

RE: (b) (6)
Katy, Texas 77449

Dear Mr. Neugebauer:

I am writing on behalf of my constituent, (b) (6), regarding his request for assistance with your office.

Enclosed please find a Privacy Authorization Form and other documentation provided by my constituent. I would appreciate if you would provide me with whatever information you may feel may help address my constituent's concerns. Please direct your response to my Brenham office at 2000 South Market Street, Brenham, Texas 77833.

If you have any questions or concerns, you may contact Marita Mikeska at 979/830-8497. I am grateful for any assistance you are able to provide in the matter, and I look forward to hearing from you in the near future.

Sincerely,

Michael T. McCaul
Michael T. McCaul
Member of Congress

MTM:mkm

<http://www.house.gov/mcraul>
PRINTED ON RECYCLED PAPER



Congressman Michael McCaul

Privacy Authorization Form

Name: (b) (6) E-mail: (b) (6)
 Street Address: (b) (6)
 City: Katy State: TEXAS Zip Code: 77449
 Home Phone: (b) (6) Work Phone: (b) (6)
 Social Security No.: (b) (6) Date of Birth: (b) (6)
 Federal Agency: Claim Number:

Please tell us about your situation or difficulty. Include details regarding the current status and any corrective measures you have taken to resolve this matter.

See Attachment.

(Use additional sheets as necessary)

In accordance with the Privacy Act of 1974, I hereby authorize Congressman Michael McCaul, or a member of his staff, to inquire with the appropriate federal agencies relative to the situation stated above.

Signature: (b) (6) Date: 7/16/2009

Please return this form and documentation to the district office listed below:

5929 Balcones, Suite 305
 Austin, TX 78731
 Phone: (512) 473-2357
 Fax: (512) 473-0514

Rosewood Professional Building
 990 Village Square, Suite II
 Tomball, TX 77375
 Phone: (281) 255-8372
 Fax: (281) 255-0034

2000 S. Market St., Suite 303
 Brenham, TX 77833
 Phone: (979) 830-8497
 Fax: (979) 830-1984

Note: When submitting the Privacy Authorization form, please provide copies of any documentation you may have pertaining to your issue.

7/16/2009

Dear Congressman Michael McCaul,

On Saturday July 11th 2009 there was a fire next to my home in Katy, Texas. I was just taking my kids to the pool, and saw a huge mushroom cloud of black and grey smoke. It looked like something you see in the movies. I quickly sent my wife and kids to a friend's house outside of the area and grabbed my camera and went to see what was on fire.

It was **Ram Chemical Supply** at **4949 Greenhouse Road Houston, Texas 77084**. This is a business that buys chemicals in bulk like chlorine and acids that are used in swimming pools, and then packages the products into smaller containers for sale in their stores, **Warehouse Pool Supply**. **Warehouse Pool Supply** has many of these locations all over Texas. The same owner of **Ram Chemical Supply** owns **Warehouse Pool Supply**.

They are located in an unincorporated area of Harris County and they built the business before the cut off date to have inspections by the **Harris County Fire Marshall**. The term they use for this is "Grandfathered". They subsequently have not had a Fire Marshall inspection to this date.

My concern is the rebuilding, in the same location, and the storing of these toxic chemicals again less than a mile from four schools and only 200 feet away from homes. **(RELOADING A SUBURBAN BOMB!)**. It is public knowledge that they (**Ram Chemical Supply**) were here before the houses and the schools, but I feel they need to be a responsible company and relocate the chemicals to a more industrial part of town.

I also feel that if this was a "responsible" company they should have had some form of fire protection to put out fires that may occur, even though it wasn't required by code. I feel there should be legislation in place to prevent storing and processing of hazardous materials with out an adequate fire prevention system in place. "Grandfathered" or not!

Please help!

Thanks, A very concerned citizen and family man.

Katy, Texas 77449

(b) (6)

64-001-1088

JUL-21-2009 13:51 From:

To: 9798301984

P. 4/4



HARRIS COUNTY, TEXAS

FIRE MARSHAL'S OFFICE
INSPECTION DIVISION

M. S. Montgomery
Fire Marshal

July 14, 2009

(b) (6)

Katy, TX. 77449

Reference: 4949 Greenhouse Rd
RAM Chemical

Dear Mr. (b) (6)

The listed property is located in the unincorporated areas of Harris County, Texas. Harris County adopted the International Fire Code 2006 edition as of March 1, 2007. Certain buildings may be subject to inspection under Texas Local Government Code 352 (County Fire Marshal Statute). In addition the County Fire Marshal's office inspects facilities or businesses to satisfy the requirements of licensing agencies. The County Fire Marshal's office inspects gated and non-gated multi-unit housing projects to satisfy the code standards regarding vehicular or pedestrian gates and building identification.

A review of the Harris County Fire Marshal file indicates no inspection has been completed at the above location. There are no outstanding/open building or fire code violations at this time.

If you have further questions, please contact our office.

Respectfully yours,

Marlene Payne
Sr. Administrative Coordinator-Inspections

Cc: files



AL-09-001-1088

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

AUG 18 2009

The Honorable Michael T. McCaul
Member, United States
House of Representatives
2000 South Market Street
Brenham, TX 77833

Dear Congressman McCaul:

Thank you for your letter of July 23, 2009, to our headquarters office concerning Ram Chemical Supply in Katy, Texas. Your letter was referred to me for reply since Texas is within the jurisdiction of the Environmental Protection Agency (EPA) Region 6.

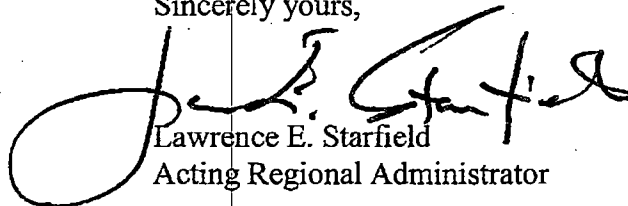
The facility is covered by the City of Houston's Local Emergency Planning Committee (LEPC), which helps the community prepare for potential hazardous chemical and other related disasters. Mr. Nick J. Guillen, LEPC Administrator in Houston, can be reached at (713) 884-3786 or Nicholas.guillen@cityofhouston.net. We believe your constituent would be best served by working with the Houston LEPC.

My staff has also provided some additional information on this incident and the Ram facility. One of our On-Scene-Coordinators responded to this incident; his report is available online at www.epaosc.org/GreenhouseRoadChemicalFire and enclosed here. EPA's response work at this site is complete and any ongoing clean-up is the responsibility of the facility. They must report their progress to Mr. Greg Goode with the Houston regional office of the Texas Commission on Environmental Quality (TCEQ). You may contact Mr. Goode for more information at (713) 767-3578.

We also reviewed the facility's status under federal law. Our Resource Conservation and Recovery Act (RCRA) program indicated the chemicals your constituent mentioned are not listed as hazardous waste under the regulations, nor is Ram a registered or permitted hazardous waste facility under TCEQ's RCRA authority. Staff in our pesticides program confirmed Ram is registered as an active pesticide production facility (establishment number 048242-TX-001), but it has no enforcement actions and complies with their permit.

If you have any questions, please call me at (214) 665-2100, or your staff may contact Cynthia Fanning of my staff, at (214) 665-2142.

Sincerely yours,



Lawrence E. Starfield
Acting Regional Administrator

Enclosure

cc: Ms. Betty Bell, TCEQ
Mr. Greg Goode, TCEQ
Mr. Nick Guillen, Houston LEPC

Internet Address (URL) • <http://www.epa.gov>

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Congress of the United States
Washington, DC 20515

November 6, 2013

The Honorable Gina McCarthy
EPA Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC 20460

RE: Brick MACT

Dear Administrator McCarthy -

We are writing to express our concern regarding the Environmental Protection Agency's (EPA) proposed Maximum Achievable Control Technology (MACT) rule for brick and structural clay processes. This "brick MACT" could jeopardize the economic viability of brick manufacturers and distributors in our states and imperil hundreds of thousands of jobs nationwide. We urge you to exercise the discretion provided by Congress in the Clean Air Act (CAA) to minimize regulatory burdens on the brick industry that do not provide commensurate environmental benefit. We urge EPA to fully consider how such measures would affect public health and the economic vitality of brick manufacturers, distributors, and communities that rely on them for their livelihood.

The brick industry is in a unique situation. In 2003, EPA issued a Brick MACT that the brick industry implemented at a total compliance cost upward of \$100 million. Controls installed to comply with the 2003 MACT rule largely remain in operation. This 2003 MACT, however, was vacated in 2007 due to no fault of the brick industry. It is problematic when an industry is subject to two consecutive rounds of technology-based MACT rules, particularly after compliance was attained with the first technology-based MACT. Moreover, we are concerned that the lower emission levels attained from controls installed to comply with the 2003 vacated rule may be used as the baseline for the second MACT and may result in an even more stringent rule than would have been imposed absent the first MACT. This "MACT on MACT" situation could require the costly removal and replacement of still-viable air pollution control devices without producing actual environmental or human health benefits.

On December 7, 2012, EPA published a proposed schedule for a new Brick MACT pursuant to efforts to negotiate a consent decree with the complainant in the case vacating the 2003 Brick MACT. We understand that EPA has amended this proposed consent decree to add an additional six months to the schedule for the proposed rule. We commend EPA for this decision. This newly proposed schedule envisions a final rule issuance late December of 2014. We urge EPA to continue to review the schedule and identify if and when additional changes to the final schedule should be made.

We respectfully request that EPA use this time to take the steps necessary to promulgate a rule which protects public health and the environment, but does not impose unwarranted burdens on significant portions of the brick industry. We believe such an approach would include the following:

1. **Consideration of Work Practice Standards and Accurate Burden Estimates.** We urge EPA to use the authority in the CAA to consider work practice standards, wherever reasonable, including for the relatively small amount of metal HAP emissions, including mercury. This review should include an assessment of whether work practice standards are warranted for all pollutants not covered by a health-based standard. EPA is currently considering very expensive controls for the minimal amounts of mercury that the industry emits. The brick industry is on the list for MACT development because of acid gasses, not metal emissions, and to absorb crippling control costs to receive minor reductions in the amount of mercury and metals the industry emits may not be justified or even required to meet the requirements of the Clean Air Act. In addition, since EPA's estimated annual compliance costs are significant (running well over \$150,000,000 per year) and the rule will impact a substantial number of small businesses, thoughtful consideration of the additional reviews required to comply with the Regulatory Flexibility Act (RFA) are critical. EPA must then develop a thorough Initial Regulatory Flexibility Analysis that assesses the impacts on small businesses and examines less burdensome alternatives. EPA must also provide accurate estimates of the cost and a reasonable determination of the technical feasibility of control devices to meet the standard as an essential part of an initial RFA. We believe work practice standards could both protect the environment and eliminate unwarranted burdens.
2. **Health-based standard.** CAA Section 112(d)(4) allows for consideration of health-based thresholds when establishing MACT standards for a category. While this action is discretionary under the CAA, the unique MACT on MACT situation discussed above, as well as the limited quantity of emissions generated by brick manufacture -- especially as compared to other regulated industries subject to recent MACTs -- justify full consideration of the health-based approach for standards set pursuant to this rule. If EPA chooses not to pursue a health-based approach to this regulation, we ask that EPA explain fully why this approach is not reasonable for this industry.
3. **Establish reasonable subcategories.** The CAA provides ample authority for EPA to use its discretion to establish subcategories when evaluating MACT for an industry. We urge EPA to use this discretion to minimize unnecessary "MACT on MACT" impacts for this industry, including the removal of viable air pollution control devices installed in good faith to comply with the 2003 MACT. At a minimum, EPA should maintain the same subcategories as in the 2003 rule. However, EPA should fully explore all potential subcategorization options.

4. **Non-major sources.** As EPA calculates the "MACT floor" for a category of major sources, we urge EPA to follow a literal reading of the CAA, which requires that EPA include only sources within the category when determining the MACT floor for existing sources. At present, we understand that EPA staff has indicated their intention of including sources from outside the category in the floor determination. By CAA definition, the floor determination for existing sources in a source category that includes only major sources should only include major sources. This would exclude all area sources, including "synthetic area sources." Congress made no provision in the CAA for EPA to create a third classification of sources because the definition of "area source" includes all facilities that do not meet the definition of "major source," including "synthetic area" sources. EPA is incorrectly treating this subset of area sources differently from other area sources.

Thank you for considering the incorporation of these environmentally-responsible and cost-conscious approaches as EPA develops the proposed Brick MACT rule. A reasonable standard will ensure that health and environment are protected and that this essential industry can continue to thrive, generate jobs in our states, and help our struggling economy rebound.

Sincerely,

Bill Johnson

Alan Fuchs

Nicholas Bachman

Charles W. Dent

Sanford D. Bishop Jr.

Jeri Sewell

Doug Lamborn

John H. Kuyek GA-2

James Baker

Adrian Smith

Pat Tilber

Walt M'Al

Marsha Blackburn

Cory Anderson

Gold Potatoes

Ben Hill

Don Fall TX-26

Dan P. Kr

Craig Harper

[Signature] TN-4

Richard Hobson

Tom Graves

[Signature] Hoby

Doug Colby GA-09

H. Wayne Giff

Steven Mark

Andy Ryan

Bradley FAR-1

Regina (Jubilee) No. 02

Ray Thomas

Nicky Phillips

Barbara 04-15

Sam Johnson

Barbara

Jim Davis

J. J. Jr.

Tom Williams

Robert Roy

Paul

Scott Adams

William

Tommy

Agnes Young

R. J. Jr.

Walter B. Jones

Virginia Fox

Shelley More Capito

Leon A. Welch

Tim Walberg

~~Eric Swalley~~

Robert E. Latta

Michael F. Smith



AL-14-000-1164

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 10 2014

OFFICE OF
AIR AND RADIATION

The Honorable Michael T. McCaul
U.S. House of Representatives
Washington, DC 20515

Dear Congressman McCaul:

Thank you for your letter of November 6, 2013, co-signed by 51 of your colleagues, to U.S. Environmental Protection Agency Administrator Gina McCarthy, regarding standards that the EPA is in the process of developing for the brick industry. The Administrator asked that I respond on her behalf.

The EPA is required to set national emissions standards for hazardous air pollutants (NESHAP) under section 112(d) of the Clean Air Act (CAA). As you mention in your letter, although the EPA issued a NESHAP for this industry in 2003, the United States Court of Appeals for the District of Columbia Circuit vacated that rule in 2007. We are in the process of developing a new rule in response to the vacatur. The brick and structural clay manufacturing industry remains unregulated under CAA section 112(d) because no federal 112(d) standard is in place. Sources in this industry emit a number of air toxics, including hydrogen fluoride, hydrogen chloride and toxic metals (such as antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead and selenium).

Your letter asks that the EPA consider work practice standards, wherever reasonable, and that we assess the cost impacts that the proposed standards will have on the brick industry. We agree that in some cases work practices may be appropriate, and we are assessing the potential use of work practice standards where it is reasonable and consistent with the requirements of the CAA. The EPA analyzes the costs that may be associated with all proposed rules and will conduct a regulatory impact analysis (RIA) to thoroughly assess the impacts.

Your letter also asks that we consider health-based standards and that we use our discretion to establish subcategories. We are aware of the brick industry's desire that we set health-based standards and we will consider them as we develop the proposed rule. We also agree that subcategorization is an important consideration and we are evaluating all potential subcategories that may be appropriate for the brick industry.

Your letter also raises concerns regarding the inclusion of "synthetic area sources" when determining the Maximum Achievable Control Technology (MACT) floor for existing sources. The CAA requires the MACT floor to be calculated based on the best-performing sources in the source category. As part of this rulemaking, we are considering all available flexibilities that will minimize the impacts on the brick industry while still meeting the legal requirements of the CAA.

14-OW-1164

In closing, I would like to underscore that we are sensitive to the impact that this rulemaking may have on the brick industry. As we go forward, we are considering a variety of options based on the diversity of process units, operational characteristics and other factors affecting hazardous air pollutant emissions. I can assure you that we will consider the concerns of the brick industry as we develop the proposed rule.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at mackay.cheryl@epa.gov or (202) 564-2023.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

AL-14-000-7699

outgoing
enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 15 2014

OFFICE OF
CIVIL RIGHTS

The Honorable Michael McCaul
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:


I am pleased to send you the enclosed copy of the U.S. Environmental Protection Agency's Fiscal Year 2013 annual report prepared in accordance with Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

This report provides information regarding the number of cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged; the amount of money required to be reimbursed by the EPA to the Judgment Fund in connection with such cases; the number of employees disciplined for discrimination, retaliation, harassment or any other infractions of any provision of law referred to under the Act; an analysis of trends and knowledge gained; and accomplishments.

An identical letter has been sent to each entity designated to receive this report as listed in Section 203 of the No FEAR Act. The U.S. Attorney General, the Chair of the U.S. Equal Employment Opportunity Commission, and the Director of the U.S. Office of Personnel Management will also be sent a copy of the report.

If you have any questions, please contact me, or your staff may contact Christina J. Moody in the EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,


Velveta Golightly-Howell
Director

Enclosure

OFFICE OF CIVIL RIGHTS

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Fiscal Year 2013

Annual Report to Congress
Pursuant to the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

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I. EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2013 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2013, there were a total of 12 cases pending before Federal courts. Among these cases, there were 9 claims of violation of Title VII of the Civil Rights Act of 1964; 4 claims of violations of the Rehabilitation Act; 4 claims of violation of the Age Discrimination in Employment Act; one claim of violation of the Equal Pay Act, and one claim of violation of 5 USC 2302.

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$500, all of which was designated for the payment of attorney's fees. This settlement amount was reimbursed to the Judgment Fund.

Of the remaining 11 cases, 3 were dismissed with prejudice, 2 are currently pending decisions on dispositive motions, one is pending a decision before the U.S. Court of Appeals for the Third Circuit, one is under settlement negotiations, and the remaining cases are at the discovery stage in U.S. Federal District Courts.

II. BACKGROUND

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report the status or disposition of the cases; the amount of money required to be reimbursed to the judgment fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws;

and an analysis of the data collected with respect to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into five categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to EEO complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006; final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006; and the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The Equal Employment Opportunity Commission (EEOC) published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared this report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

III. DATA

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2013, there were a total of 12 cases pending before Federal courts. Among these cases, there were 9 claims of violation of Title VII of the Civil Rights Act of 1964; 4 claims of violations of the Rehabilitation Act; 4 claims of violation of the Age Discrimination in Employment Act; one claim of violation of the Equal Pay Act, and one claim of violation of 5 USC 2302.

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$500, all of which was designated for the payment of attorney's fees. This settlement amount was reimbursed to the Judgment Fund.

Of the remaining 11 cases, 3 were dismissed with prejudice, 2 are currently pending decisions on dispositive motions, one is pending a decision before the U.S. Court of Appeals for the Third Circuit, one is under settlement negotiations, and the remaining cases are at the discovery stage in U.S. Federal District Courts.

b. Reimbursement to the Judgment Fund

During FY 2013, the Agency was required to reimburse the Judgment Fund \$500, all of which was designated for the payment of attorney's fees. This is \$174,500 less than the amount the Agency was required to reimburse to the Judgment Fund in FY 2012.

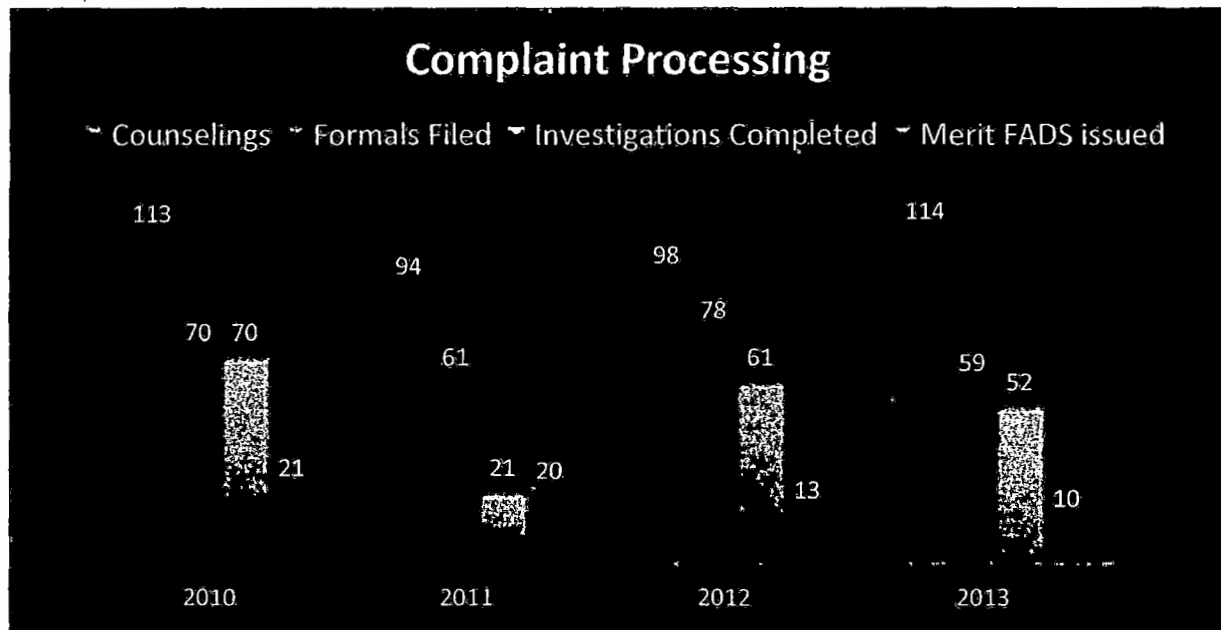
c. Disciplinary Actions (5 C.F.R. § 724.302 (a)(3) & (5))

There were no employees disciplined in FY 2013 in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act is included in Appendix 1.

The final year-end data indicates that during FY 2013, there was a 23% reduction in the number of formal complaints filed compared to FY 2012. In FY 2012, 76 formal complaints of discrimination were filed with the Agency. During FY 2013, there were only 59 new administrative complaints of discrimination filed by 56 employees or applicants for employment. Three Agency employees filed more than one complaint during the reporting period.



During FY 2013, EPA's Office of Civil Rights (OCR) procedurally dismissed 7 complaints. The average time to process a dismissal was 147 days, a 31% reduction from the FY 2012 processing average of 212 days pending prior to dismissal.

FY 2013 complaint totals can be found in their entirety at Appendix 1 of this report.

e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))

The FY 2013 Agency EEO policy addresses a variety of topics including the prohibition of discrimination in the workplace and a reminder to all employees that the agency will review any finding of discrimination and take appropriate disciplinary or corrective action. The EEO policy, as well as information on addressing harassment and reasonable accommodation, was discussed in the mandatory Successful Leaders program for all new Agency supervisors and in the new employee orientation sessions.

The FY 2013 EEO Policy can be found in its entirety at Appendix 3 of this report.

Additionally, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline Senior Executive Service* and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. Such actions may range from informal corrective actions such as a written warning to more formal disciplinary actions such as a suspension without pay or removal.

EPA has an ongoing commitment to continue to include clear expectations EEO in performance standards for managers. EPA has maintained revised SES standards that not only focus on preventing discrimination in hiring activities and promoting merit systems principles, but also require senior leaders to be personally involved in leading and implementing EEO and civil rights initiatives consistent with applicable laws and executive orders. In addition, at the end of

every performance cycle, the Director of OCR, Performance Review Board members, and Executive Review Board members evaluate management self-assessments to ensure that the respective rating is an appropriate reflection of the accomplishments listed.

f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))

During FY 2013, we analyzed lessons learned from the EPA FY 2012 *"No FEAR Act Training Course"* that was hosted on the EPA eLearning site. The EPA eLearning site is an Internet-based training tool designed to support cross-functional training development needs for EPA employees. Based on input received from Agency employees regarding the 2012 training, we have contracted with Skillport to develop a more comprehensive training to include other areas such as discrimination based on gender stereotyping and the Genetic Information Nondiscrimination Act of 2008. We anticipate employees will be able to take the new training beginning Spring 2014. As with the 2012 NoFear Training, the eLearning site will be available for access 24 hours a day, 7 days a week, from work or home, allowing for maximum flexibility to meet the No FEAR Act training requirements. OCR, the Regional EEO Officers and the Headquarters Program Management Officers are planning to aggressively track and promote the successful completion of this training by individual offices, with a goal of reaching a 100% completion rate, Agency-wide, for the year.

IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))

At the conclusion of FY 2013, the bases of alleged discrimination most often raised were: (1) retaliation; (2) sex; and (3) age. The 59 EEO complaints filed at EPA in FY 2013 contained 29 allegations of retaliation, 26 allegations of sex discrimination, and 22 allegations of age discrimination. While retaliation and sex remain the top bases alleged in complaints filed for the second year in a row, these totals are not only significantly lower than in the previous year, they are the lowest in the previous 5 years worth of historical data. It should also be noted that retaliation and age are among the top three bases most frequently alleged in discrimination complaints throughout the entire Federal workforce.¹

The data shows that the 0.31% of the Agency workforce of 17,002 employees that has filed complaints. This falls well below the last reported government-wide average of 0.53% of the workforce who filed complaints. At the time of reporting, government-wide totals beyond FY 2011 were not yet available.

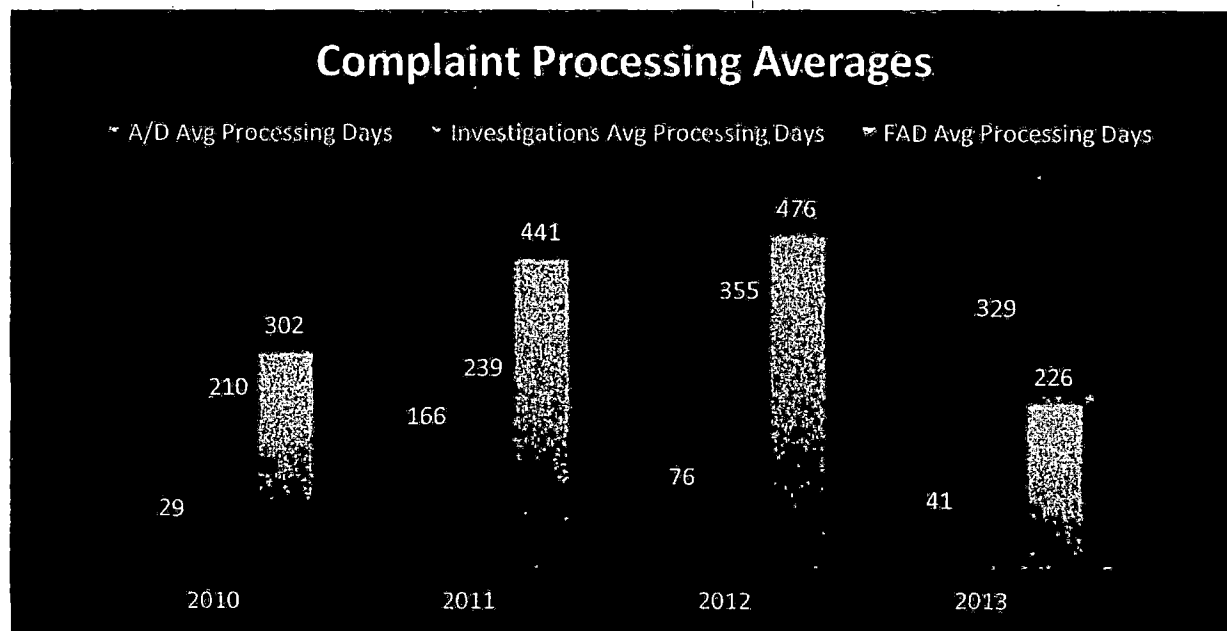
The Agency saw a 22% decrease in the number of complaints filed from FY 2012 to FY 2013. We attribute this in part to EPA's reinvigorated emphasis on the use of Alternative Dispute Resolution (ADR) to facilitate the ability of managers to hear about allegations of unlawful discrimination and to have an opportunity to resolve them at the lowest possible level. EPA managers and supervisors are required to participate, absent extenuating circumstances, as reiterated by the Administrator in her 2013 annual EEO Policy Statement. By certifying and training more EEO counselors and providing informational materials about the benefits of ADR in print and electronically, EPA's ADR participation rate during the informal process increased

¹ As reported in FY 2011 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2011/index.cfm>

from 33.7% in FY 2012 to 49.41% in FY 2013. These efforts also increased EPA's rate of providing timely EEO counseling from 69.39% in FY 2012 to 92.11% in FY 2013. The Agency is currently developing an ADR program that would focus on increasing the number of cases in which ADR is offered in the formal complaint process which may increase our resolution rate. This program would continue to promote resolution at the lowest possible level by reengaging complainants and managers during the investigative stage of the complaint and attempt resolution prior to completing the investigation.

EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints as managers and supervisors expand their knowledge of their responsibilities to promote equal employment opportunity.

EPA completed investigations for complaints pending during FY 2013 with an average processing time of 321 days, 31 days sooner than the Agency FY 2012 average of 352 days. The average age of FADs pending in FY 2013 was 261 days, almost half of our FY 2012 average of 533 days and the lowest the Agency has seen in the previous 4 years. As discussed in the FY 2012 NoFear Report, the Agency focused extensively on revamping and streamlining the investigative process and strategically alternating between the processing of older and newer matters to improve the proportion of cases adjudicated timely.



V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))

During FY 2012, the Agency was required to reimburse the Judgment Fund \$500 for the payment of attorney's fees.

VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))

In March 2011, Administrator Lisa P. Jackson appointed the Civil Rights Executive Committee, chaired by Deputy Administrator Bob Perciasepe, to recommend actions necessary for building a model civil rights program at the agency. After extensive review of the program, the Civil Rights Executive Committee submitted a final report, *Developing a Model Civil Rights Program for the Environmental Protection Agency*, to the Administrator outlining the agency's commitment to strengthening civil rights, equal employment opportunities, diversity in the workplace and revitalizing the agency's implementation of external civil rights laws. The Administrator approved the report and recommendations on April 13, 2012. On May 1, 2013, the Administrator approved the Agency Order which established the position of deputy civil rights official (DCRO) within each regional office and assistant administrator's office to serve as that office's primary point of accountability for assisting the OCR with effectively meeting the Agency's civil rights responsibilities and goals.

DCROs have broad oversight authority within their respective office or region for implementation of the civil rights program consistent with agency policy and directives, recognizing that offices or regions may need different staffing profiles for some functions. For example, Equal Employment Opportunity counselors are needed in every region, but at headquarters EEO counselors report to OCR rather than individual program offices. DCROs will identify and/or request adequate funding and resources for civil rights work and ensure their organizations have well-functioning policies, processes and management controls. Some of the activities that they will undertake include:

- Assuring that appropriate staff and expertise are available for their organizations to carry out an effective civil rights program including EEO counselors, alternate dispute resolution staff, special emphasis program managers and EEO officers.
- Developing and implementing the Equal Employment Opportunity Commission's Management Directive 715 Action Plans for their offices and regions that promote equal employment opportunity in a manner consistent with the agency's MD 715 Report, promote diversity and inclusion, and address other issues as required. Ensuring that the goals and objectives are communicated to subordinate management officials.
- Incorporating appropriate EEO and civil rights language into performance agreements as required for managers and as necessary for certain other positions.
- Facilitating informal EEO complaint resolution in conformance with Delegation 1-39, assuring the broad integration of well-functioning alternate dispute resolution approaches across the agency civil rights and employee relations activities and promoting the use of pre-complaint processes as a means of resolving EEO matters.

EPA's civil rights program has taken several other steps to strengthen EPA's commitment to civil rights, equal employment opportunity and diversity in the workplace:

- In FY 2013, OCR continued to make critical changes to its counseling program by offering monthly training teleconferences to all EEO Counselor's, organized and presented by OCR Employment Complaints Resolution Staff (ECRS) members to Agency EEO Officials. The timeliness and quality of EEO Counselor's Reports

continues to show marked improvement, and the utilization and success rate for ADR have all significantly improved.

- Within the EPA, every member of the Senior Executive Service continues to have a performance standard related to equal employment opportunity in the workplace. Senior managers must outline the specific initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- EPA has taken steps to improve the timeliness of EEO investigations. Of particular note is the new requirement for contractors to deliver investigations on schedule or receive reduced payment and/or terminate the contract.
- All EPA investigators and counselors continue to receive the required annual training and/or refresher training in accordance with MD 110.
- EPA works to comply with orders from administrative judges in a timely manner, and this is a factor that is included in the performance standard of the Assistant Director for the Office of Civil Rights, Employment Complaints Resolution Staff (ECRS). In addition, EPA has systems in place to ensure that the Agency initiates any monetary or other relief in a timely manner.
- In FY 2013, OCR's ECRS attended extensive FAD writing training as well as training related to writing acceptance and dismissal letters, analyzing hostile work environment claims and conducting thorough investigations.
- OCR also continues to post all No FEAR statistics on the OCR website on a quarterly basis.
- Members of OCR management make presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- The Civil Rights Director and EEO Officials across the Agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify specific action items that can continue to improve the Agency's EEO and civil rights program.

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

September 23, 2011

The Honorable Gina McCarthy
Assistant Administrator, Office of Air and Radiation
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 6101A
Washington, DC 20460

Dear Assistant Administrator McCarthy:

As Members of the Committee on Science, Space, and Technology we write in regard to the Environmental Protection Agency's (EPA) Cross-State Air Pollution Rule (CSAPR) finalized on July 6, 2011. We remain concerned about the consequences that the finalized CSAPR will have on the 28 States included in the final rule. As the Committee continues to examine the process, scientific and technical basis, and associated economic and reliability impacts of CSAPR, it is essential that EPA explain certain features of the finalized rule, with a compliance deadline of just over 3 months from now, to those affected.

CSAPR, as finalized, will have significant implications on electricity generation, delivery, and affordability. Specifically, the Electric Reliability Council of Texas (ERCOT), the electric grid operator for the State of Texas, found CSAPR will require between 1,200 and 6,000 MW of generation to curtail operations during certain periods of the year. The recent record demand for electricity this summer in Texas, had it occurred with CSAPR in place, would have resulted in rolling blackouts on multiple days putting the welfare of Texas' citizens and economy at risk. Further, in order to comply with the rule, Texas power generator Luminant announced the need to idle two generating units and cease mining Texas lignite at three mines resulting in the loss of hundreds of jobs. The second largest municipal electricity generator in Florida, the Orlando Utilities Commission, expects that if compliance is required in the short time frame provided for by CSAPR, drastic operational adjustments and possible temporary plant shutdowns may be the consequence.

This all coming from one rule while several other new regulations by EPA are on the horizon, including those for sulfur dioxide, particulate matter, mercury, and hazardous air pollutants. These will add up to overlapping compliance schedules and further jeopardize electricity reliability and affordability and local jobs and economies. Additionally, the Federal Energy Regulatory Commission (FERC), statutorily required to protect our Nation's electric reliability, has noted the need for more involvement in the analysis of EPA rules to help reduce the possibility of reliability problems as a result of those rules.

It is our understanding that you have already recognized that technical adjustments to CSAPR may be necessary. We understand that EPA has offered to make adjustments, based on technical information provided to the Agency, resulting in the provision of additional allowances to companies and alterations to States' emissions budgets. In light of this, and the Committee's continued examination of CSAPR we ask that you provide responses to the following:

- 1) Please list and describe all meetings in the last three months with entities affected by CSAPR. Please include a description of any formal or informal commitments or offers the Agency may have made to such entities involving technical or other adjustments to their emissions budgets and allowance allocations under CSAPR as finalized.
- 2) Faced with overlapping compliance schedules and competing regulatory authorities, it is conceivable that electric generating units may, at some point, be subject to conflicting requirements from the relevant environmental authority and the relevant reliability authority. Please provide a description of all meetings and all documents in which the Agency considered or addressed this type of situation. Further, please describe your understanding of the responsibilities associated with an electric generating unit being designated as a "reliability/must run" unit. Finally, please explain to the Committee all interactions with other federal agencies, State agencies, regional transmission organizations or other relevant bodies in which such matters were discussed or considered.
- 3) How much more will electricity ratepayers in the 28 States affected by CSAPR pay for electricity by 2014 as a result of the rule?
- 4) The EPA Integrated Planning Model (IPM) is the basis of the Agency's analysis for CSAPR. Has the IPM undergone an audit other than by the federal government or a contractor for the federal government? As to the assumptions used to generate the projected IPM results for CSAPR, did EPA receive any input from outside the federal government? Is there anyone outside the federal government or the owners of the IPM with a comprehensive understanding of the algorithms, processes, and functions of the IPM and if so is that information publicly available?

APPENDIX 1

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

EPA (and below)

For 4th Quarter 2013 for period ending September 30, 2013

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
Number of Complaints Filed	79	77	70	64	76	59
Number of Complainants	72	71	63	61	75	56
Repeat Filers	9	8	9	3	2	3

Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	42	33	39	25	39	21
Color	14	9	14	10	13	6
Religion	2	1	5	2	9	4
Reprisal	37	35	47	39	43	29
Sex	28	35	28	29	41	26
PDA	0	0	0	0	0	0
National Origin	10	6	14	10	13	12
Equal Pay Act	0	0	0	2	1	1
Age	28	37	28	21	35	22

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
Disability	16	25	21	24	23	18
Genetics	0	0	0	0	0	0
Non-EEO	1	0	0	1	8	7

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2008	2009	2010	2011	2012	
Appointment/Hire	0	0	2	1	5	5
Assignment of Duties	12	6	18	12	11	5
Awards	4	2	6	2	5	0
Conversion to Full-time	1	0	0	0	2	0

Disciplinary Action

Demotion	1	0	0	0	0	0
Reprimand	3	3	3	3	2	3
Suspension	0	2	2	3	2	4
Removal	0	1	0	1	2	0
Other	0	0	3	2	4	2
Duty Hours	0	0	1	3	3	2
Evaluation Appraisal	17	9	14	11	21	9
Examination/Test	0	0	0	1	0	0

Harassment

Non-Sexual	30	36	35	30	30	22
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Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2008	2009	2010	2011	2012	
Sexual	1	0	1	1	1	2
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	5	2	3	4	4	1
Promotion/Non-Selection	28	24	24	18	25	9
Reassignment						
Denied	1	0	4	3	2	0
Directed	2	2	6	1	4	2
Reasonable Accommodation	3	6	2	8	7	8
Reinstatement	0	0	0	0	0	0
Retirement	0	1	0	0	1	0
Termination	4	7	4	9	5	4
Terms/Conditions of Employment	11	8	16	10	18	10
Time and Attendance	13	7	6	6	17	6
Training	6	7	6	4	10	2
Other	0	0	0	0	7	3
Processing Time	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
Complaints pending during fiscal year						
Average number of days in investigation	205.84	217.32	214.40	236.82	352.31	320.77

Complaints by Issue		Comparative Data					
		Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>		2008	2009	2010	2011	2012	
Average number of days in final action	261.40	192.96	171.29	398.16	318.42	147.95	
Complaint pending during fiscal year where hearing was requested							
Average number of days in investigation	215.97	211.79	204.77	242.18	347.38	325.31	
Average number of days in final action	44.22	125.75	0	154.67	134.36	55.45	
Complaint pending during fiscal year where hearing was not requested							
Average number of days in investigation	183.18	225.34	228.69	218.60	360.20	314.40	
Average number of days in final action	354.48	224.59	366.40	564.18	533.17	261.00	

Complaints Dismissed by Agency	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
Total Complaints Dismissed by Agency	1		2		3		3		10		7	
Average days pending prior to dismissal	64		62		75		232		212		147	
Complaints Withdrawn by Complainants												
Total Complaints Withdrawn by Complainants	8		3		2		4		11		19	
Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Without Hearing	0	0	0	0	0	0	0	0	1	100	0	0
With Hearing	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	1	100	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		1		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	1	100	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination	Comparative Data											

Rendered by Issue	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	1	100	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		1		0	

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	1	100	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09- 30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2013Thru09- 30
	2008	2009	2010	2011	2012	
Total complaints from previous Fiscal Years	70	90	117	111	119	136
Total Complainants	65	82	102	89	99	123
Number complaints pending						
Investigation	1	1	0	6	2	2
ROI issued, pending Complainant's action	0	0	1	0	4	3
Hearing	3	9	12	31	36	53
Final Agency Action	18	43	35	20	15	24
Appeal with EEOC Office of Federal Operations	15	14	15	18	22	27
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2013Thru09- 30
	2008	2009	2010	2011	2012	
Pending Complaints Where Investigations Exceed Required Time Frames	14	7	5	20	14	18

APPENDIX 2**Anti-Harassment Policy****MEMORANDUM****FROM:** Administrator Lisa P. Jackson**TO:** All EPA Employees

As a matter of policy, harassment of any kind will not be tolerated at the U.S. Environmental Protection Agency. When harassment is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action, it is unlawful. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected EEO activity; protected genetic information; sexual orientation or status as a parent when:

- a) the behavior can reasonably be considered to adversely affect the work environment; or
- b) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- a. submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- b. submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- c. such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4600 or the EPA Office of Civil Rights at (202) 564-7272.

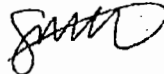
APPENDIX 3



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 18 2013

MEMORANDUM**SUBJECT:** 2013 Equal Employment Opportunity Policy Statement**FROM:** Gina McCarthy **TO:** All Employees

Fostering a diverse and inclusive work environment through equal employment is essential to our work and our service to the American people. I am proud to reaffirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation or retaliation based on previous EEO activity. The EPA also will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions, including those related to hiring, training or awards, must be made in accordance with the merit-system principles contained in 5 U.S.C. § 2301.

I expect our management team to continue to provide first-class leadership in support of equal employment opportunities. I ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment.

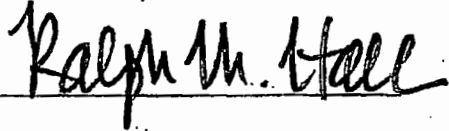
The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress within 45 calendar days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment complaints resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. The agency will review any finding of discrimination and, when necessary, take appropriate disciplinary or corrective action.

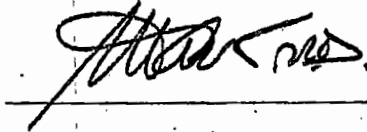
A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines our ability to achieve our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.

Please provide the written responses by no later than two weeks from the date of this letter. If you have any questions regarding this request please contact the Subcommittee on Energy and Environment staff at (202) 225-8844.

Sincerely,



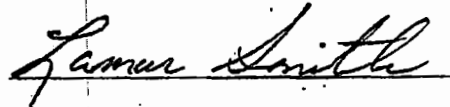
Ralph M. Hall
Chairman



Andy Harris
Chairman
Subcommittee on Energy & Environment



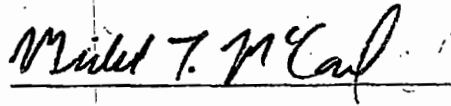
Paul C. Broun



Lamar S. Smith



Randy Neugebauer



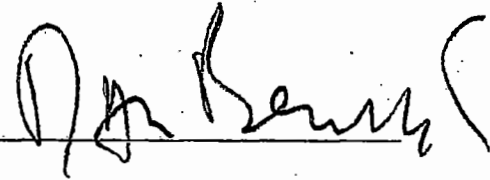
Michael T. McCaul



Dana Rohrabacher



Sandy Adams



Dan Benishek

cc: The Honorable Eddie Bernice Johnson, Ranking Member
The Honorable Brad Miller, Ranking Member, Subcommittee on Energy & Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 1 2012

OFFICE OF
AIR AND RADIATION

The Honorable Michael T. McCaul
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman McCaul:

Thank you for your letter, co-signed by eight of your colleagues, requesting information related to the Cross-State Air Pollution Rule (CSAPR or Cross State Rule). The U.S. Environmental Protection Agency appreciates your comments, and I would like to assure you that we can achieve the goals of CSAPR without compromising the availability or reliability of affordable electricity.

In developing CSAPR and other power sector regulations, the EPA analyzed potential impacts on electric system capacity. These impacts are described in the Regulatory Impact Analyses that the EPA has conducted for the power sector rules. These analyses project that the EPA's rules will result in only a modest level of retirements – of older, dirtier, less efficient power plants – and that these retirements are not expected to have an adverse impact on electric generation resource adequacy. The EPA has benefited from discussions with the U.S. Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC) with regard to electric reliability issues and has incorporated information from the North American Electric Reliability Corporation (NERC) into its rulemakings.

Last fall, the DOE released a report presenting an independent assessment of generation resource adequacy under the final CSAPR and proposed MATS rules. The report is posted on DOE's website and can be accessed at: <http://energy.gov/pi/office-policy-and-international-affairs/office-policy-and-international-affairs/office-policy--11>. The DOE assessment uses a highly-conservative scenario that is substantially more stringent than the EPA's actual rules. The report determines that, even in this highly conservative hypothetical scenario, capacity reserve margins are preserved in every region of the country, with the addition of only 1 gigawatt of additional unplanned natural gas generation (or equivalent demand side resources) necessary in a single region of the country. The report also concludes that, assuming prompt and responsible action by regulators and utilities, the timelines associated with construction of new generation and retrofit installation of pollution control technologies are generally comparable to compliance timelines under the Clean Air Act. It finds, as the EPA has consistently emphasized, that if localized reliability concerns arise, the Clean Air Act provides flexibility mechanisms to bring sources into compliance over time while maintaining reliability.

These results are consistent with the findings of a Bipartisan Policy Center report issued in July of last year, which concluded that “scenarios in which electric system reliability is broadly affected are unlikely to occur.”¹¹ M.J. Bradley & Associates and the Analysis Group have completed a series of reports on behalf of a group of electric utilities concluding that “the electric industry can comply with the EPA’s air pollution rules without threatening electric reliability.” An update to this report released in November underscores “the many tools that are available for ensuring electric reliability” as companies comply with these rules.¹²

In developing CSAPR, the EPA relied on the best information available, in many cases information submitted by power plant operators or accessible in public documents, about the operation of certain power plants. After the EPA finalized CSAPR on the basis of this information, various parties submitted information updating, correcting or completing the information available to the EPA during the rulemaking process. This new information allowed the agency to identify data discrepancies and to update various assumptions regarding certain plants. Based on these updated assumptions, on February 7, 2012, the EPA finalized technical adjustments that provide flexibility by increasing budgets in 17 states. The adjustments include an approximately 50,000 ton increase to Texas’ SO₂ budget and small increases to both Texas’ ozone season NO_x and annual NO_x budgets with corresponding revisions to assurance levels and new unit set-asides.

In addition to the increase in the number of allowances that certain states would receive, the EPA finalized adjustments to increase a company’s menu of compliance options by allowing sources to use an unlimited number of interstate allowances for compliance in 2012 and 2013. This was designed to provide greater assurance that the allowance trading market will continue to develop rapidly. The technical changes are substantial for certain states like Texas, although overall they maintain the extensive public health benefits of CSAPR and do not change the core elements or fundamental structure of the rule.

You should also be aware that, on December 30, 2011, the U.S. Court of Appeals for the District of Columbia Circuit stayed the Cross State Rule pending resolution of litigation challenging it. The Court order imposing the stay did not discuss the merits of the challenges. The EPA believes the Cross State Rule is legally sound and will continue defending it vigorously. While the stay is in effect, power plants will not have to comply with the Rule until the stay is lifted. Pursuant to the Court’s order, CAIR, which was to be replaced by the Cross State Rule as of January 1, 2012, is now in effect.

CSAPR will achieve major public health and environmental benefits for Americans that are significantly greater than the costs. For example, in a single year (2014), the rule is projected to produce benefits valued at \$120 billion to \$280 billion, including the avoidance of:

- Up to 34,000 premature deaths
- 15,000 heart attacks
- 400,000 cases of aggravated asthma
- 19,000 cases of acute bronchitis
- 19,000 hospital and emergency room visits
- Over 1.8 million days when people miss work or school

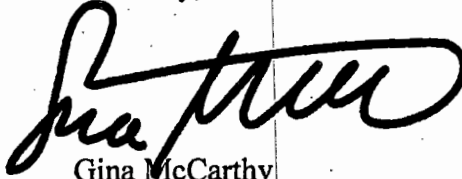
¹¹ Bipartisan Policy Center, June 2011, “Environmental Regulation and Electric System Reliability.”

¹² M.J. Bradley & Assocs. LLC & Analysis Group, November 2011, “Fall 2011 Update: Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability.”

11-001-6018

Detailed responses to your specific questions and requests are provided in the enclosures. Again, thank you for your letter. Please contact me with any questions, or your staff may contact Tom Dickerson in EPA's Office of Congressional and Intergovernmental Affairs at (202) 564-3638.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina McCarthy', with a stylized, flowing script.

Gina McCarthy
Assistant Administrator

Enclosures

cc: The Honorable Eddie Bernice Johnson
Ranking Member
Committee on Science, Space, and Technology

ENCLOSURE

- 1) **Please list and describe all meetings in the last three months with entities affected by CSAPR. Please include a description of any formal or informal commitments or offers the Agency may have made to such entities involving technical or other adjustments to their emissions budgets and allowance allocations under CSAPR as finalized.**

Please see the attached spreadsheet for the list of meetings that technical staff from EPA's Office of Air and Radiation Clean Air Markets Division, the division responsible for developing CSAPR, had with CSAPR stakeholders from the end of July until the signature of the proposed technical revisions. The results of those meetings are reflected in the proposed revisions rule to the extent that EPA found new and adequate technical information supporting the proposed changes to state budgets and unit-level allocations. All of the information obtained by EPA regarding the proposed revisions can be found in the public docket (EPA-HQ-OAR-2009-0491). EPA also solicited public comments on the proposal regarding any other previously unavailable technical information that stakeholders feel the Agency should consider as we move forward to implement the rule.

- 2) **Faced with overlapping compliance schedules and competing regulatory authorities, it is conceivable that electric generating units may, at some point, be subject to conflicting requirements from the relevant environmental authority and the relevant reliability authority. Please provide a description of all meetings and all documents in which the Agency considered or addressed this type of situation. Further, please describe your understanding of the responsibilities associated with an electric generating unit being designated as a "reliability/must run" unit. Finally, please explain to the Committee all interactions with other federal agencies, State agencies, regional transmission organizations or other relevant bodies in which such matters were discussed or considered.**

To the EPA's knowledge, the situation that you describe has occurred very infrequently. It can occur when a facility that had planned to shut down temporarily or permanently is required to run by DOE or FERC under section 202 or 207 of the Federal Power Act, respectively. However, the Clean Air Act provides sufficient flexibility to allow the EPA to bring a source into compliance when it is required to run for reliability purposes, and the EPA has used this authority in the past.

For example, during the 2001 energy shortfall in the West, in response to various State proclamations of emergency and orders from energy regulatory agencies, the EPA worked with the States, Independent System Operators and local air pollution agencies to formulate case-specific approaches that allowed critical projects to move forward quickly in order to minimize likelihood of blackouts. These approaches took the form of orders that acknowledged the violation of state air pollution limits and other requirements, in instances where sources were employing, or agreed to employ, appropriate air pollution-minimizing control technologies. In most of these agreements, sources also agreed to come into full compliance by a date certain, and in most cases agreed to specific emission limits during the noncompliant periods and to conduct, or to fund, environmentally beneficial projects and/or to purchase allowances that would offset pollution emitted during the time that the source was out of compliance. More recently, the EPA has used its enforcement tools to address reliability issues that might arise when plants are temporarily shut down in order to install emissions controls and to ensure reliable operation. In 2005 and 2006, the EPA worked with DOE, FERC, the District of Columbia Public Service Commission (DCPSC), the Virginia Department of Environmental Quality (VADEQ), and Mirant

Potomac River LLC (Mirant) to assess Mirant's impact on the Clean Air Act's National Ambient Air Quality Standards (NAAQS) and allow continued operation of its generating units at a level that both ensured electric reliability and minimized emissions of air pollutants. In response to an unexpected and sudden shutdown by Mirant of generating units to address NAAQS concerns, DOE ordered the utility to immediately restart and operate and promptly sought the EPA's consultation and involvement. Together, the EPA and DOE and the aforementioned entities resolved the matter through a number of steps that included a short-term informal agreement and formal administrative orders by the EPA and DOE that each accounted for the parallel authority of the other. The EPA order established a set of operating limitations and procedures designed to both protect air quality and provide the company with the operating flexibility needed to ensure reliable electrical service.

The EPA understands the term "reliability/must run unit" to be a term of art referring to a generating unit that the owner/operator has proposed to deactivate, but which has been identified by the relevant Regional Transmission Operator or other planning authority as needed to run under certain circumstances in order to maintain electric reliability. The planning authority and the owner/operator may enter into a contractual agreement that provides for the availability of the relevant unit to run as needed for reliability as well as for recovery by the owner/operator of necessary costs of operation.¹ The North American Electric Reliability Corporation (NERC) has described reliability/must run (RMR) contracts as "contracts that require generation operation to satisfy bulk electric reliability requirements where the transmission system is inadequate to meet NERC reliability standards [which] may lead to operation of older, less efficient generation facilities in populated areas."² The details of RMR arrangements can vary in each contract and across regions. CSAPR offers substantial unit-level flexibility such that individual units may continue to satisfy RMR obligations while obtaining (either through initial allocation or subsequent purchase) whatever allowances are necessary to support RMR-driven operations.

The EPA had extensive substantive contact and consultation with FERC and DOE as well as state utility regulators, Regional Transmission Organizations and other grid planning authorities, NERC and electric utilities and their representatives throughout the rulemaking process to discuss issues related to maintaining a robust and reliable grid while reducing power plant emissions of harmful pollutants. In addition we received numerous comments during the public comment process regarding issues related to reliability. EPA's final rules are stronger as a result of this process. For a discussion reflecting the EPA's consideration of electric reliability issues in connection with its power sector rulemakings, please see the preamble of the final Mercury and Air Toxics Standards rule. 77 Fed. Reg. 9304, 9406-11 (Feb. 16, 2012). These issues are also addressed in a recent policy memorandum issued by the EPA's Office of Enforcement and Compliance Assurance (OECA) on December 16, 2011, which discusses the EPA's intended approach regarding the use of administrative orders under Clean Air Act section 113(a) with respect to sources that must operate in noncompliance with the MATS rule for up to a year to address a specific and documented reliability concern. The policy can be accessed at: <http://www.epa.gov/compliance/resources/policies/civil/erp/mats-erp.pdf>.

¹ Some may use the term "reliability/must run unit" more broadly to describe any unit that has been identified by a relevant planning or regulatory authority – e.g. DOE or FERC under section 202 or 207 of the Federal Power Act, or a State utility regulator – as needed to run in order to maintain electric reliability.

² NERC comments to the Department of Energy, February 2, 2006, available at http://www.nerc.com/docs/docs/pubs/Final_NERC_Comments_on_DOE_NOI_on_NIETCs_030606.pdf.

In addition to these consultations during rulemaking processes, the EPA is currently engaged, in consultation with FERC and DOE, in extensive outreach to these same stakeholders with regard to the implementation of the Mercury and Air Toxics Standards and other power sector rules – with a focus on supporting the planning and coordination necessary to maintain electric reliability. If you desire further information on this subject, the EPA will be happy to work with your staff to accommodate such interest.

3) How much more will electricity ratepayers in the 28 States affected by CSAPR pay for electricity by 2014 as a result of the rule?

As reported in the Regulatory Impact Analysis for CSAPR (<http://www.epa.gov/airtransport/pdfs/FinalRIA.pdf>), the projected retail electricity prices in the CSAPR region are projected to change by an average of only 0.8% in 2014.

4) The EPA Integrated Planning Model (IPM) is the basis of the Agency's analysis for CSAPR. Has the IPM undergone an audit other than by the federal government or a contractor for the federal government? As to the assumptions used to generate the projected IPM results for CSAPR, did EPA receive any input from outside the federal government? Is there anyone outside the federal government or the owners of the IPM with a comprehensive understanding of the algorithms, processes, and functions of the IPM and if so is that information publicly available?

EPA's version of IPM, as well as its regulatory applications, are regularly reviewed by the public and benefit from detailed public comments submitted to EPA in response to notice-and-comment rulemakings and Notices of Data Availability (NODAs). Documentation of the IPM modeling framework, including its algorithms, processes, and functions, is publicly available on the web at www.epa.gov/airmarkets/progsregs/epa-ipm/index.html. Along with other features of IPM, its algorithms, processes, and functions have been peer reviewed by panels of independent outside experts who focus on IPM's coal supply and transportation assumptions, natural gas assumptions, and power sector model formulation, among other areas. Beyond the modeling framework, all of the modeling assumptions specific to CSAPR are fully documented in two reports: Documentation for EPA Base Case v.4.10 Using the Integrated Planning Model (EPA 430-R-10-010) and Documentation Supplement for EPA Base Case v.4.10_FTransport – Updates for Final Transport Rule (EPA 430-K-11-004). These are publicly available for viewing and downloading from the web at www.epa.gov/airmarkets/progsregs/epa-ipm/BaseCasev410.html and www.epa.gov/airmarkets/progsregs/epa-ipm/CSAPR/docs/DocSuppv410_FTransport.pdf. EPA explicitly solicited a broad range of public review and input on IPM modeling inputs and assumptions for use in developing the final CSAPR by publishing a Notice of Data Availability that appeared in the Federal Register on September 1, 2010 (75 FR 53613).

IPM has also been used by states, other Federal agencies, environmental groups, and industry, all of whom subject the model to their own review procedures as well.

11-001-6018

Group	Meeting Date	Topic
NYISO and Department of Environmental Conservation	7/27/2011	Near-term operational constraints at New York units
NYISO and Department of Environmental Conservation	8/4/2011	Near-term operational constraints at New York units
Kansas Department of Health & Environment	8/11/2011	Quantification of Kansas state budget
Louisiana Department of Environmental Quality and the Public Service Commission	8/11/2011	Quantification of Louisiana state budget
Mississippi Department of Environmental Quality	8/11/2011	Quantification of Mississippi state budget
NYISO and Department of Environmental Conservation	8/11/2011	Near-term operational constraints at New York units
NYISO and Department of Environmental Conservation	8/16/2011	Near-term operational constraints at New York units
Luminant	8/17/2011	CSAPR compliance planning at Luminant units
Louisiana Department of Environmental Quality and the Public Service Commission	8/18/2011	Quantification of Louisiana state budget
Multiple Florida Utilities	8/23/2011	Basis for inclusion of Florida in CSAPR
Entergy	8/25/2011	Near-term operational constraints at Entergy units
Mississippi Department of Environmental Quality	8/25/2011	Quantification of Mississippi state budget
Class of '85	8/25/2011	Presentation of final rule and projected impacts
Xcel Energy	8/25/2011	Presentation of final rule and projected impacts
PSEG Energy Resources & Trade	8/30/2011	Near-term operational constraints at New Jersey units
NYISO and Department of Environmental Conservation	8/30/2011	Near-term operational constraints at New York units
Entergy	8/31/2011	Near-term operational constraints at Entergy units
NYISO and Department of Environmental Conservation	8/31/2011	Near-term operational constraints at New York units
NYISO and Department of Environmental Conservation	9/1/2011	Near-term operational constraints at New York units
Luminant	9/2/2011	CSAPR compliance planning at Luminant units
NYISO and Department of Environmental Conservation	9/6/2011	Near-term operational constraints at New York units
NYISO and Department of Environmental Conservation	9/7/2011	Near-term operational constraints at New York units
Louisiana Department of Environmental Quality and the Public Service Commission	9/12/2011	Quantification of Louisiana state budget
Entergy	9/12/2011	Near-term operational constraints at Entergy units
NYISO and Department of Environmental Conservation	9/12/2011	Near-term operational constraints at New York units
ERCOT	9/14/2011	Quantification of Texas state budgets
NYISO and Department of Environmental Conservation	9/15/2011	Near-term operational constraints at New York units
Luminant	9/16/2011	CSAPR compliance planning at Luminant units
Texas PUC, ERCOT	9/16/2011	Quantification of Texas state budgets
PSEG Energy Resources & Trade	9/21/2011	Near-term operational constraints at New Jersey units
Dairyland Power	9/22/2011	Quantification of Dairyland Power unit level allocations
Entergy	9/26/2011	Near-term operational constraints at Entergy units
Wisconsin Department of Natural Resources	9/26/2011	Quantification of Wisconsin state budgets
PJM	9/27/2011	Near-term operational constraints at New Jersey units
Southern Co.	9/28/2011	Quantification of Georgia state budget
AEP	9/28/2011	Quantification of Ohio state budgets
SPP	10/7/2011	CSAPR and SPP

AL-16-000-4758



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 2 2016

OFFICE OF
CIVIL RIGHTS

The Honorable Michael McCaul
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to send you the enclosed copy of the U.S. Environmental Protection Agency's (EPA) Fiscal Year 2015 annual report prepared in accordance with Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

This report provides information regarding the number of cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged; the amount of money required to be reimbursed by the EPA to the Judgment Fund in connection with such cases; the number of employees disciplined for discrimination, retaliation, harassment or any other infractions of any provision of law referred to under the Act; an analysis of trends and knowledge gained; and accomplishments.

An identical letter has been sent to each entity designated to receive this report as listed in Section 203 of the No FEAR Act. The U.S. Attorney General, the Chair of the U.S. Equal Employment Opportunity Commission, and the Director of the U.S. Office of Personnel Management will also be sent a copy of the report.

If you have any questions, please contact me, or your staff may contact Thea J. Williams in the EPA's Office of Congressional and Intergovernmental Relations at williams.thea@epa.gov or (202) 564-2064.

Sincerely,

A handwritten signature in cursive script, reading "Velveta Golightly-Howell".

Velveta Golightly-Howell
Director

Enclosure

OFFICE OF CIVIL RIGHTS

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Fiscal Year 2015

Annual Report to Congress
Pursuant to the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

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I. EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2015 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2015, there were a total of 13 cases pending before Federal courts. Among these cases, there were eight (8) claims of violation of Title VII, seven (7) claims of violation of the Rehabilitation Act, five (5) claims of violation of the Age Discrimination in Employment Act, and one (1) claim of violation of 5 U.S.C. 2302.

Final Agency Actions involving a finding of discrimination may be issued on the record or following an Equal Employment Opportunity Commission (EEOC) Administrative Hearing. The No FEAR Act requires Federal agencies to post the total number of final actions involving a finding of discrimination, along with the issues in and bases for such complaints. In 2015, EPA had one (1) finding of discrimination following an EEOC Administrative Hearing.

EPA is dedicated to establishing and maintaining a model Civil Rights Program that serves as an example for all Federal agencies. EPA's commitment to this goal is reflected in the subject report which the Agency respectfully submits for review.

II. BACKGROUND

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively, if they practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report their status or disposition; the amount of money required to be reimbursed to the Judgment Fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws; and an analysis of the data collected relative to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into four (4) categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two (2) years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to Equal Employment Opportunity (EEO) complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006. Final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006, and OPM published the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The EEOC published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared the subject report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

III. DATA

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged."

Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act, stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2015, there were a total of thirteen (13) cases pending before Federal courts. Among these cases, there were eight (8) claims of violation of Title VII, seven (7) claims of violation of the Rehabilitation Act, five (5) claims of violation of the Age Discrimination in Employment Act, and one (1) claim of violation of 5 United States Code 2302, Prohibited Personnel Practices.

Of the thirteen (13) cases noted above, one (1) was settled during the reporting period. As part of that settlement, the agency agreed to pay a lump sum amount of \$17,000. This amount was paid directly by the agency and, therefore, no reimbursement to the Judgment Fund was required.

Another case involved a jury finding of retaliation against the agency. In that case, the jury awarded the plaintiff \$200,000 in compensatory damages and \$27,500 in back pay. The agency is awaiting a final order to be issued by the court on the amount of attorney's fees owed by the agency. A final decision on whether the agency will appeal the jury's finding in the case is pending.

Of the remaining eleven (11) cases, the agency prevailed on five (5) after filing dispositive motions with the court. An appeal on the dismissal of one (1) of those cases is pending. The agency is awaiting decisions on four (4) other cases in which it filed dispositive motions. Two (2) other cases are currently in pre-trial proceedings.

b. Reimbursement to the Judgment Fund

During FY 2015, the agency was not required to reimburse the Judgment Fund.

c. Disciplinary Actions (5 Code of Federal Regulations (C.F.R.) § 724.302 (a)(3) & (5))

There were no employees disciplined in FY 2015, in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices. Discipline as defined in § 724.102 means any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act are included in Appendix 1. The final year-end data indicate that during FY 2015, there was a twenty-one percent (21%) increase in the number of formal complaints filed compared to FY 2014. In FY 2014, forty-eight (48) formal complaints of discrimination were filed with the agency. During FY 2015, there were fifty-eight (58) new administrative complaints of discrimination filed by fifty-seven (57) employees or applicants for employment. One (1) agency employee filed more than one (1) complaint during the reporting period. Based on a five (5) year trend analysis, the relatively low number of complaints filed in FY 14 was an anomaly that the agency attributed to FY 2014 being the only year within that trend analysis to report a

large separation of employees, including those employees participating in early out/buy-out retirement initiatives.

During FY 2015, EPA's Office of Civil Rights (OCR) saw a slight increase in the investigation timeframe by five percent (5%) (245.08 days in FY 2014 to 257.40 days in FY 2015). During FY 2015, EPA had one (1) finding of discrimination following an EEOC Administrative Hearing. FY 2015 complaint totals can be found in their entirety at Appendix 1 of this report.

e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))

The 2014 Agency EEO Policy addresses a variety of topics, including prohibition of discrimination in the workplace, and it includes a reminder to all employees that the agency will review any finding of discrimination and take disciplinary or corrective action, when appropriate. The EEO Policy, as well as information on addressing harassment and reasonable accommodation, was discussed in EPA's mandatory Successful Leaders Program for all new Agency supervisors. The 2014 EEO Policy can be found in its entirety at Appendix 3 of this report.

Additionally, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline, Senior Executive Service*, and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. These actions may range from informal corrective actions, including oral admonishments and written warning, to more formal disciplinary actions such as a suspension without pay or removal to more formal disciplinary actions such as reprimands, suspensions without pay, reductions in grade or pay, up to removal.

EPA has an ongoing commitment to continue to include clear expectations about EEO in performance standards for managers. EPA has maintained revised Senior Executive Service standards that not only focus on preventing discrimination in hiring activities and promoting merit systems principles, but also require senior leaders to be personally involved in leading and implementing EEO and civil rights initiatives consistent with applicable laws. In addition, at the end of every performance cycle, the Director of OCR, Performance Review Board members, and Executive Review Board members evaluate management self-assessments to ensure that the respective rating is an appropriate reflection of the accomplishments listed.

f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))

No Fear Act training was not required for current agency employees in FY 2015. However, new employees were required to take the training within their first 90 days of onboarding. For FY 2016, agency employees are required to complete the No Fear training no later than December 31, 2016. The agency is committed to achieving a 100% completion rate for current employees for FY 2016.

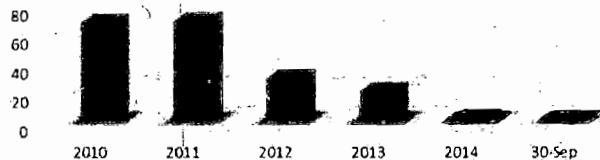
IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))

At the conclusion of FY 2015, the bases of alleged discrimination most often raised were: (1) retaliation; (2) age; and (3) sex. The fifty-eight (58) EEO complaints filed in EPA in FY 2015 contained thirty (30) allegations of retaliation, twenty-eight (28) allegations of age discrimination, and twenty-seven (27) allegations of sex discrimination. While retaliation remains the top basis alleged in complaints filed, it should be noted that retaliation, age and sex are the top three (3) bases most frequently alleged in discrimination complaints throughout the entire Federal workforce.¹

The data show that the 0.36% of the agency workforce of 15,566 employees that have filed complaints falls well below the last reported government-wide average of 0.5% of the workforce that did.² EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints, by having managers and supervisors continuously expand their knowledge of their responsibilities to promote equal employment opportunity. Additionally, EPA promotes training to help employees understand they also have a role in creating a workplace that promotes EEO.

EPA completed investigations for complaints pending during FY 2015 with an average processing time of 257 days with only two (2) investigations exceeding required time frames. As discussed in the FY 2012 No Fear Report, and implemented effectively during FY 2013 and 2014, the agency's revamped, streamlined investigative process has significantly improved the proportion of cases adjudicated within the applicable timeframes:

Pending Complaints Where Investigations Exceed Required Time Frames



During FY 2015, EPA's OCR procedurally dismissed six (6) complaints. The average time to process a dismissal was ninety-nine (99) days, reflecting a 62% decrease from the FY 2014 processing average of 258 days pending prior to dismissal. Contributing factors include the addition of a second OCR attorney advisor.

V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))

As reported, during FY 2015, the agency was required to reimburse the Judgment Fund in connection with two (2) settled cases. One settlement involved a payment of \$650,000, while the

¹ As reported in FY 2014 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2014/index.cfm>.

² As reported in FY 2014 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2012/index.cfm>.

other settlement involved a total payment of \$670,000, \$170,000 of which was designated for the payment of attorneys' fees.

VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))

EPA's Civil Rights program has taken several steps to strengthen EPA's commitment to civil rights and equal employment opportunity in the workplace:

- EPA will continue to utilize the newly created, internal FAD management plan to strategically reduce the agency FAD docket.
- OCR is focused on improving processing time in accepting/dismissing complaints: In addition to imposing time elements in its EEO professionals' performance plans, the agency has two full-time attorneys among its staff in the civil rights office to review all formal complaints for acceptance/dismissal, write all dismissal decisions, and provide EEOC case law in its analyses to support its dismissal decisions.
- The EEO Training Committee continues to offer monthly training teleconferences to all EEO Counselors. The training has been presented by the EEO community, internal EPA partners and outside vendors. The timeliness and quality of EEO Counselors' Reports continue to show marked improvement and the utilization of and success rate for ADR have all significantly improved.
- EPA will increase its efforts to market the ADR program during the informal phase of EEO counseling, via centralized EEO intake. OCR anticipates that using ADR in this way will help reduce costs associated with adjudicating formal complaints. OCR will continue using the shared neutrals programs in regions at no cost to EPA. OCR will market and promote ADR as part of overall agency policy.

The agency is currently developing a formal ADR program that will focus on increasing its offer rate in the formal complaint process to attain an anticipated increase in its resolution rate. This program will continue to promote resolution at the lowest possible level by reengaging complainants and managers during a complaint's investigative stage and seek resolution prior to completing the investigation.

- OCR will continue to monitor and evaluate its current Standard Operation Procedures for investigations and its Statement of Work with the United States Postal Service, its investigative contractor. OCR will make adjustments to promote the efficiency of the investigative process with the goal of completing investigations within the 180 day requirement.

- To meet delineated goals, OCR will reevaluate its review and routing processes to determine the most efficient methods for obtaining legal sufficiency reviews while aggressively seeking to meet the regulatory requirement.
- Within the EPA, every member of the Senior Executive Service has had a performance standard related to equal employment opportunity and diversity in the workplace for several years. Senior managers must outline the specific related initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these managers' self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- All EPA investigators and counselors received the required annual training and/or refresher training in accordance with Management Directive 110.
- EPA works to comply with orders from Administrative Judges in a timely manner, and this is a factor that is included in the performance standard of the Assistant Director, Office of Civil Rights, Employment Complaints Resolution Staff (ECRS). In addition, EPA has established systems to ensure that the agency initiates any monetary or other relief in a timely manner.
- OCR posts all No FEAR statistics on the OCR website on a quarterly basis.
- OCR management members make presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws. New employees are also reminded of their obligation to complete No Fear Training within ninety (90) days of onboarding.
- The Civil Rights Director and EEO Officials across the agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify and address any potential barriers and specific action items that can continue to improve the agency's EEO and Civil Rights program.

APPENDIX 1

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

EPA (and below)

For 4th Quarter 2015 for period ending September 30, 2015

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
	2010	2011	2012	2013	2014	
Number of Complaints Filed	70	64	79	62	48	58
Number of Complainants	63	61	77	59	45	57
Repeat Filers	7	3	2	3	3	1
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
	2010	2011	2012	2013	2014	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	39	25	40	22	23	25
Color	14	10	13	7	10	11
Religion	5	2	9	4	3	5

Reprisal	47	39	44	31	28	30
Sex	28	29	42	27	14	27
PDA	0	0	0	0	0	0
National Origin	14	10	13	12	10	11
Equal Pay Act	0	2	1	1	1	2
Age	28	21	37	22	22	28
Disability	21	24	25	19	18	18
Genetics	0	0	0	0	0	1
Non-EEO	0	1	8	7	6	6
Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2010	2011	2012	2013	2014	
Appointment/Hire	2	1	5	5	7	5
Assignment of Duties	18	12	12	5	5	16
Awards	6	2	5	0	3	4
Conversion to Full-time	0	0	2	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	3	3	2	3	6	2
Suspension	2	3	2	6	4	0

Removal	0	1	2	0	3	2
Other	3	2	4	2	0	0
Duty Hours	1	3	3	2	0	0
Evaluation Appraisal	14	11	21	9	5	5
Examination/Test	0	1	0	0	0	0
Harassment						
Non-Sexual	35	30	32	22	19	28
Sexual	1	1	1	2	1	3
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	3	4	4	1	0	1
Promotion/Non-Selection	24	18	26	10	8	5
Reassignment						
Denied	4	3	3	0	2	3
Directed	6	1	5	2	2	1
Reasonable Accommodation	2	8	7	9	3	4
Reinstatement	0	0	0	0	0	0
Retirement	0	0	2	1	2	1
Termination	4	9	5	4	1	1
Terms/Conditions of Employment	16	10	19	12	11	10
Time and Attendance	6	6	18	7	2	8
Training	6	4	11	2	6	6
Other	0	0	7	2	0	0

Processing Time	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
	2010	2011	2012	2013	2014	
Complaints pending during fiscal year						
Average number of days in investigation	285.43	274.33	326.57	311.07	245.08	257.40
Average number of days in final action	310.67	449.95	409.47	198.44	289.65	321.81
Complaints pending during fiscal year where hearing was requested						
Average number of days in investigation	213.67	263.57	324.42	314.44	249.50	259.25
Average number of days in final action	0	0	326.57	35.00	12.00	36.00
Complaints pending during fiscal year where hearing was not requested						
Average number of days in investigation	339.25	312.00	328.83	306.58	233.87	253.36
Average number of days in final action	310.67	449.95	467.50	218.88	375.08	607.62
Complaints Dismissed by Agency	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
	2010	2011	2012	2013	2014	
Total Complaints Dismissed by Agency	5	6	10	6	9	6

Average days pending prior to dismissal	53	441	212	123	258	99						
Complaints Withdrawn by Complainants												
Total Complaints Withdrawn by Complainants	2	3	12	19	3	8						
Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2015Thru09-30	
	2010		2011		2012		2013		2014			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		1	
Without Hearing	0	0	0	0	0	0	0	0	0	0	0	0
With Hearing	0	0	0	0	0	0	0	0	1	100	1	100
Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2015Thru09-30	
Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.	2010		2011		2012		2013		2014			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		1		0		1		1	
Race	0	0	0	0	0	0	0	0	1	100	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0

Reprisal	0	0	0	0	1	100	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	1	100	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	1	100	0	0
Disability	0	0	0	0	0	0	0	0	0	0	1	100
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		1		1	
Race	0	0	0	0	0	0	0	0	1	100	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	1	100	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	1	100	0	0
Disability	0	0	0	0	0	0	0	0	0	0	1	100
Genetics	0	0	0	0	0	0	0	0	0	0	0	0

Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		1		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	1	100	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2015Thru09-30	
	2010		2011		2012		2013		2014			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		1		0		1		1	
Appointment/Hire	0	0	0	0	0	0	0	0	1	100	0	0

Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	1	100
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	1	100	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												

Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	1	100
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		1		1	
Appointment/Hire	0	0	0	0	0	0	0	0	1	100	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0

Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	1	100
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	1	100
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0

Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		1		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0

Harassment												
Non-Sexual	0	0	0	0	1	100	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2015Thru09- 30
	2010	2011	2012	2013	2014	
Total complaints from previous Fiscal Years	52	61	59	87	87	87
Total Complainants	47	48	52	79	82	78
Number complaints pending						
Investigation	39	51	20	11	3	1
ROI issued, pending Complainant's action	0	0	3	3	0	0
Hearing	25	36	38	59	65	68
Final Agency Action	37	19	12	22	20	20
Appeal with EEOC Office of Federal Operations	1	4	8	15	13	14
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2015Thru09- 30
	2010	2011	2012	2013	2014	
Pending Complaints Where Investigations Exceed Required Time Frames	69	70	31	22	3	2

APPENDIX 2



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 15 2014

MEMORANDUM**SUBJECT:** Anti-Harassment Policy Statement**FROM:** Gina McCarthy **TO:** All Employees

I want to reaffirm the U.S. Environmental Protection Agency's commitment to prohibit harassment of any kind, as clearly stated in our agency's anti-harassment policy. Harassment is unlawful when it is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected Equal Employment Opportunity activity; protected genetic information; sexual orientation or status as a parent when:

- the behavior can reasonably be considered to adversely affect the work environment; or
- an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the U.S. Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4646 or the EPA Office of Civil Rights at (202) 564-7272. Additional resources are available by visiting intranet.epa.gov/civilrights/lawsandstatus.htm.

APPENDIX 3



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC - 3, 2014

MEMORANDUM**SUBJECT:** 2014 Equal Employment Opportunity Policy Statement**FROM:** Gina McCarthy **TO:** All Employees

I am proud to reaffirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace. Fostering a diverse and inclusive work environment through equal employment is essential to our work and our service to the American people.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation; or retaliation based on previous EEO activity. In addition, the EPA will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions, including those related to hiring, training or awards, must be made in accordance with the merit-system principles in 5 U.S.C. § 2301.

I expect our management team to continue to provide first-class leadership in support of equal-employment opportunities. I ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment.

The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress within 45 calendar days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment Complaints Resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. The agency will review any finding of discrimination and, when necessary, take appropriate disciplinary or corrective action.

A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines the achievement of our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.

Congress of the United States
Washington, DC 20515

June 23, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

We write regarding the Supreme Court's orders granting applications from states and stakeholders to stay the "Clean Power Plan" (CPP) and your statements in a March 2016 congressional hearing on the implications of the Court's action. Specifically, we seek clarification to ensure that your statements do not result in states and other stakeholders expending scarce resources to unnecessarily comply with the CPP's deadlines. It is our belief that such actions would undermine the very purpose of the Court's orders.

As you know, five applications for relief were submitted to the Court, each requesting a stay of the CPP. One of those applications also explicitly requested "an immediate stay of EPA's rule, extending all compliance dates by the number of days between publication of the rule and a final decision by the courts, including this Court, relating to the rule's validity." Another asked that the CPP be "be stayed, and all deadlines in it suspended, pending the completion of all judicial review." Every brief opposing the applications acknowledged the requests to extend the compliance deadlines.

Moreover, long-held precedence recognizes that any request for stay carries with it the inherent tolling of all compliance deadlines if that stay were lifted. Thus, the Department of Justice stated in its brief, "In requesting a 'stay,' however, applicants . . . *explicitly or implicitly* ask this Court *to toll all of the relevant deadlines* set forth in the Rule, even those that would come due many years after the resolution of their challenge, for the period between the Rule's publication and the final disposition of their lawsuits" (emphasis added). In fact, the Department of Justice told the Court that granting the applications "would *necessarily and irrevocably* extend every deadline set forth in the Rule" (emphasis added).

On February 9, 2016 the Court issued five separate and virtually identical orders on the applications. Each order stated, "The application for a stay . . . is granted." We agree with the Department of Justice that in granting these applications without limitation, the Supreme Court both stayed the CPP and necessarily and irrevocably extended all related CPP compliance deadlines.

In a March 22, 2016 hearing before two House Energy and Commerce subcommittees, you were asked whether—if the CPP was upheld—the various compliance deadlines would also be extended by the amount of time equal to the completion of judicial review. In your response, you

stated, "Well that's not what the Supreme Court said, but we assume that the courts will make that judgement over time or will leave that to EPA to make their own judgement." When pressed further, you responded by saying, "... the Supreme Court didn't speak to that issue. The only thing they spoke to was the stay of the rule. They didn't speak to any tolling or what it meant in terms of compliance time."

As the Department of Justice's own conclusions make clear, the Court did speak to tolling when it granted the applications for relief that explicitly or implicitly requested the tolling of compliance deadlines. Those Court orders necessarily and irrevocably extended the CPP's deadlines, allowing states to hit "pause" on compliance measures during legal challenge of the CPP, so that states are not required to spend billions of dollars on immense, and in many cases irreversible, actions to implement a regulation that may never come. This harm is what drove petitioners to request relief from the Supreme Court in the first place.

We are concerned that your statements before Congress undermine the certainty that the American people deserve and the Supreme Court was seeking to provide when it granted applications to stay the CPP and toll its deadlines. If ambiguity here drives states and stakeholders to meet all CPP compliance deadlines anyway, then the Court's action will be meaningless.

In order to provide clarity to the states, utilities, and other critical stakeholders, we respectfully ask you to provide answers to the following questions:

1. Two of the applications for relief from the CPP submitted to the Supreme Court explicitly asked the Court to extend all CPP deadlines for a period equal to that of the stay. The Department of Justice concluded that all of the applications made the same request, if not explicitly, then implicitly. The Court granted these requests for relief without any limitation. How do you reconcile these facts with your claim that "the Court didn't speak to any tolling"?
2. Did any EPA official review the Department of Justice's brief in response to the applications before that brief was submitted to the Supreme Court?
3. At any point before the Supreme Court issued its orders on February 9, 2016, did any EPA official object to language in the Department of Justice's brief concluding that granting the stay "would necessarily and irrevocably extend every deadline set forth in the Rule"? Does EPA now disagree with that conclusion? If so, please provide EPA's official legal interpretation.
4. Is EPA relying on specific precedent to conclude the stay order does not toll all deadlines outlined in the final CPP rule? If so, include any such examples or case law in EPA's interpretive memo as requested in question 3 above.
5. If EPA does not disagree with the Department of Justice's conclusion that the relief requested and granted by the Court "necessarily and irrevocably" extends all CPP deadlines, then what steps is EPA taking to prepare to extend all CPP deadlines in the event the stay is lifted?

6. Why is it necessary for the Court's orders staying the CPP to "speak to any tolling" if, by the Department of Justice's own admission, those orders "implicitly," "necessarily," and "irrevocably" "extend every deadline set forth in the Rule"?
7. The Supreme Court stayed the CPP to prevent states and stakeholders from being irreparably harmed by the rule's deadlines during the judicial challenge. How would the Court's order protect states and stakeholders from irreparable harm if, upon reinstatement of the rule, those states and stakeholders did not receive an equivalent length of time to comply with the CPP?
8. EPA officials have stated the agency is developing regulations expressly related to and arising out of the final CPP, specifically the Clean Energy Incentive Plan (CEIP). The program is intrinsically linked to the implementation of the CPP and a public request for comment through issuing a proposed rule would effectively obligate stakeholders to the current CPP litigation to dedicate resources to study and comment on the proposed regulation. Given that the CEIP's fate is directly tied to the CPP litigation, what authority is the EPA relying on to conclude these actions do not contravene the Supreme Court's stay of CPP?

We look forward to your response on this matter.

Sincerely,



JOHN RATCLIFFE
Member of Congress



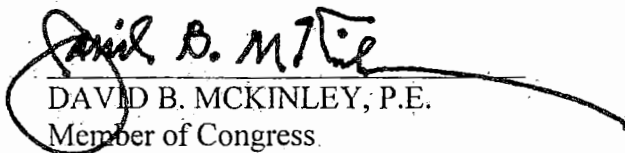
BRUCE WESTERMAN
Member of Congress



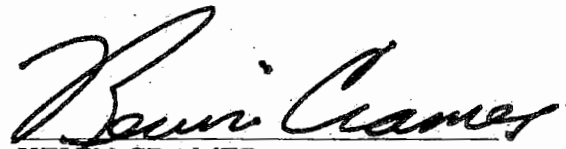
MIMI WALTERS
Member of Congress



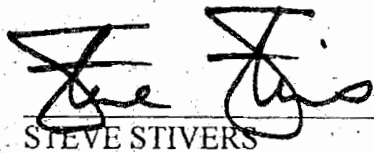
CYNTHIA M. LUMMIS
Member of Congress



DAVID B. MCKINLEY, P.E.
Member of Congress



KEVIN CRAMER
Member of Congress



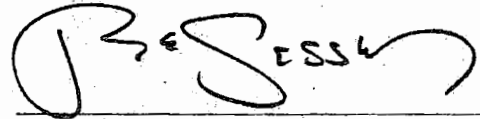
STEVE STIVERS
Member of Congress



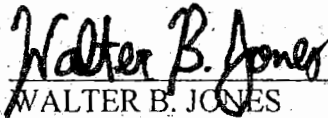
BOB GIBBS
Member of Congress



LOUIE GOHMERT
Member of Congress



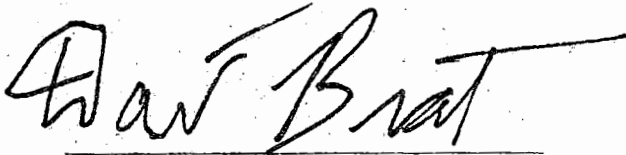
PETE SESSIONS
Member of Congress



WALTER B. JONES
Member of Congress



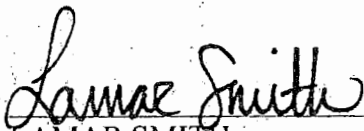
STEVE RUSSELL
Member of Congress



DAVE BRAT
Member of Congress



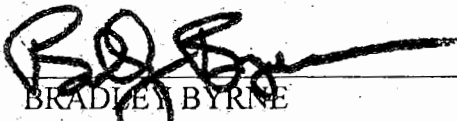
TRENT FRANKS
Member of Congress



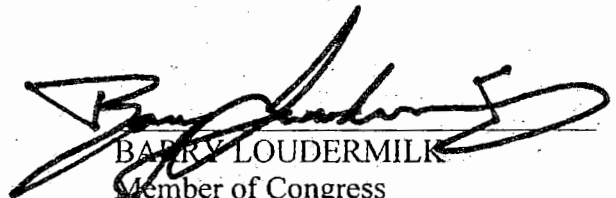
LAMAR SMITH
Member of Congress



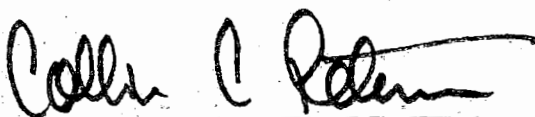
SEAN P. DUFFY
Member of Congress



BRADLEY BYRNE
Member of Congress



BARRY LOUDERMILK
Member of Congress



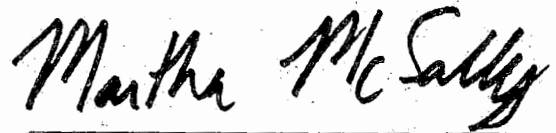
COLLIN C. PETERSON
Member of Congress



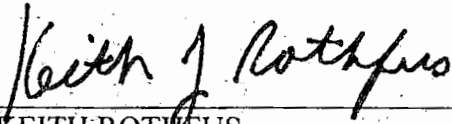
TOM GRAVES
Member of Congress



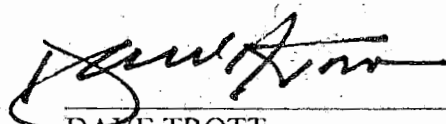
PAUL A. GOSAR
Member of Congress



MARTHA MCSALLY
Member of Congress



KEITH ROTHFUS
Member of Congress



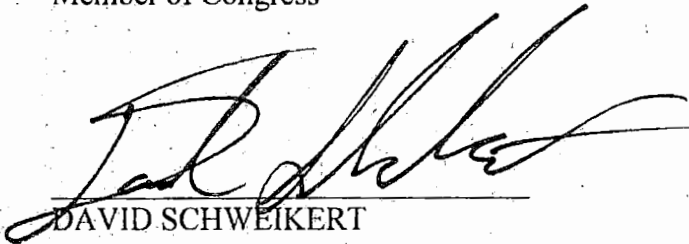
DAVE TROTT
Member of Congress



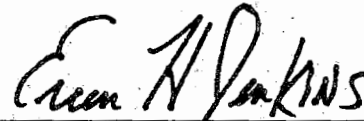
STEVE PEARCE
Member of Congress



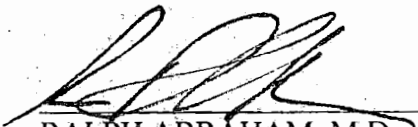
RYAN ZINKE
Member of Congress



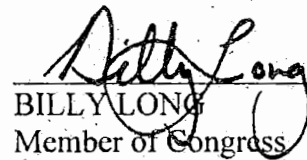
DAVID SCHWEIKERT
Member of Congress



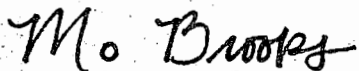
EVAN H. JENKINS
Member of Congress



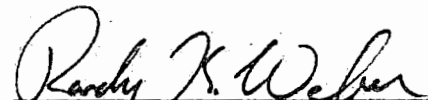
RALPH ABRAHAM, M.D.
Member of Congress



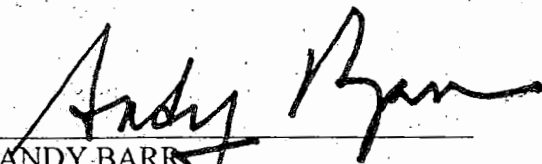
BILLY LONG
Member of Congress



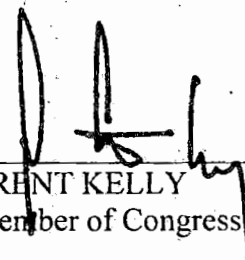
MO BROOKS
Member of Congress



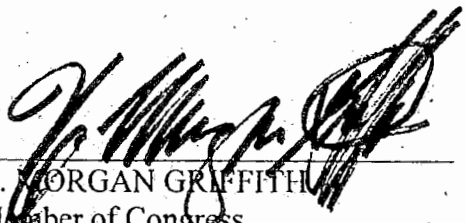
RANDY WEBER
Member of Congress



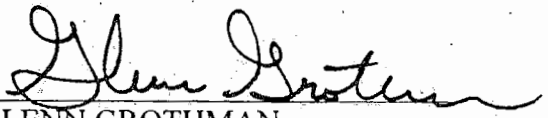
ANDY BARR
Member of Congress



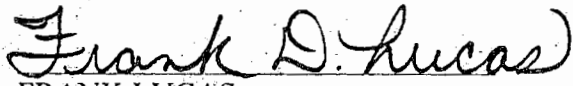
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Member of Congress



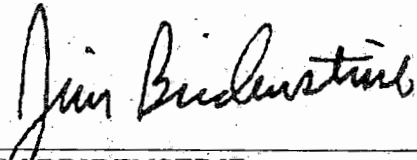
H. MORGAN GRIFFITH
Member of Congress



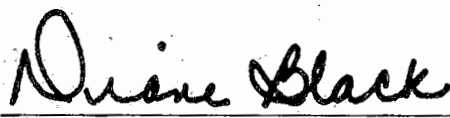
GLENN GROTHMAN
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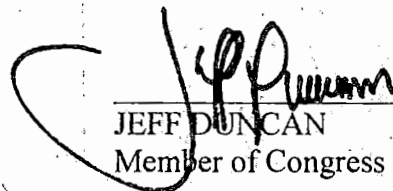
FRANK LUCAS
Member of Congress



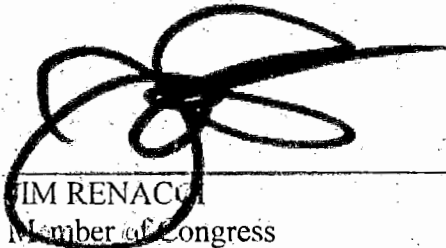
JIM BRIDENSTINE
Member of Congress



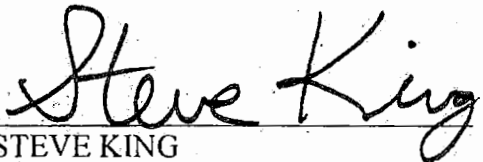
DIANE BLACK
Member of Congress



JEFF DUNCAN
Member of Congress



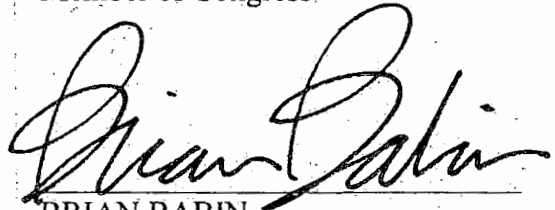
TIM RENACCI
Member of Congress



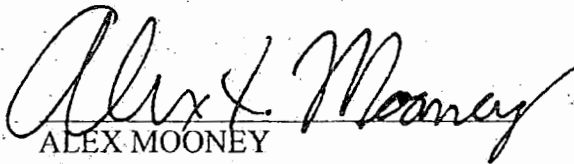
STEVE KING
Member of Congress



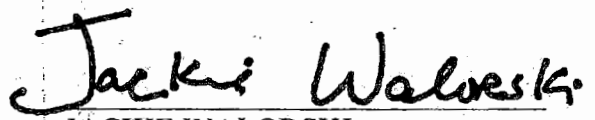
JOE BARTON
Member of Congress




BRIAN BABIN
Member of Congress



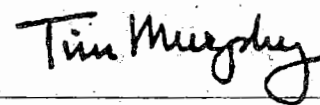
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JACKIE WALORSKI
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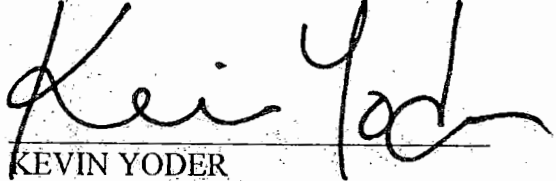



PETER T. KING
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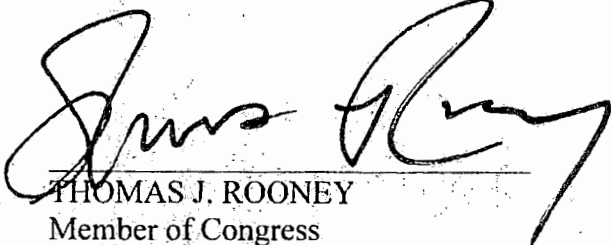


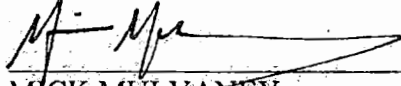
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STEVE CHABOT
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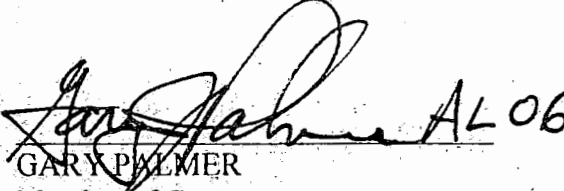

KEVIN YODER
Member of Congress



JOHN CULBERSON
Member of Congress

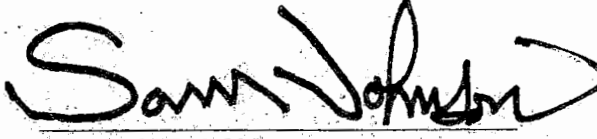

THOMAS J. ROONEY
Member of Congress



MICK MULVANEY
Member of Congress

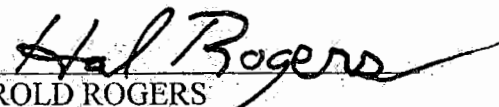

MIKE BISHOP
Member of Congress

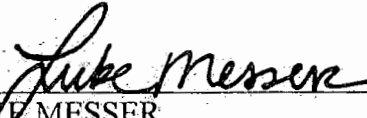

GARY PALMER
Member of Congress

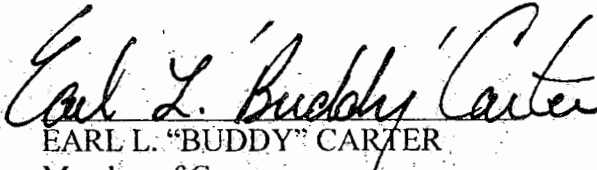

LYNN JENKINS, CPA
Member of Congress

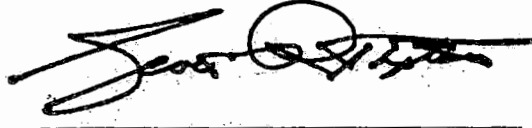

SAM JOHNSON
Member of Congress


MIKE ROGERS
Member of Congress


HAROLD ROGERS
Member of Congress


LUKE MESSER
Member of Congress


EARL L. "BUDDY" CARTER
Member of Congress


SCOTT TIPTON
Member of Congress

16-000-0297

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

A handwritten signature in dark ink, appearing to read "Janet G. McCabe". The signature is fluid and cursive, with the first name "Janet" being more prominent.

Janet G. McCabe
Acting Assistant Administrator

AL-10-001-6269

Congress of the United States
House of Representatives
Washington, DC 20515

September 22, 2010

Lisa P. Jackson
Administrator, U.S. Environmental Protection Agency
Ariel Rios Bldg., 1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Administrator Jackson:

As members of the bipartisan Congressional Sportsmen's Caucus, the largest and most active caucus on Capitol Hill, we are writing to urge you to dismiss the petition to ban the use of lead in fishing products. The attached letter from leading hunting, fishing and conservation organizations clearly points out that there is no scientific basis to warrant such a far reaching ban on traditional fishing equipment. A similar proposal to ban lead fishing tackle was dismissed by the EPA in the mid-1990s, because there was insufficient data to support such a ban – there is no additional data to support a ban today.

The American wildlife management model is the best in the world, and one of the pillars of this model is that the states retain the authority to manage most of their fish and wildlife. These state agencies are already monitoring and addressing any of the localized issues surrounding lead, making this draconian ban not only unnecessary, but intrusive. In a letter to you on this very issue dated September 2nd, the Association of Fish and Wildlife Agencies, which represents the collective perspectives of the 50 state fish and wildlife agencies, concludes, "A national ban on lead fishing sinkers is therefore neither necessary nor appropriate."

The President's "America's Great Outdoors" initiative is aimed at reconnecting Americans to the outdoors; fishing is an accessible, fun, family oriented activity that should be embraced and encouraged as part of this initiative. A ban on traditional fishing tackle will drive up costs substantially and serve as a disincentive for more Americans to get outside and enjoy this great pastime.

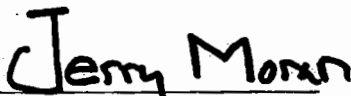
There are 60 million recreational anglers in America that contribute \$125 billion to our economy annually. Penalizing these men, women and children that are the best stewards of our environment, as well as the financial backbone to fish and wildlife conservation in our country, would be a terrible and unnecessary injustice.

We urge you to deny the petition to ban the use of lead in fishing products.

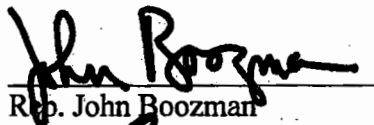
Sincerely,



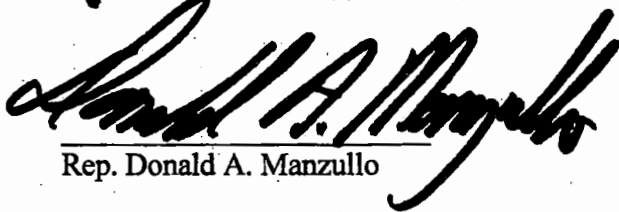
Rep. Dan Boren



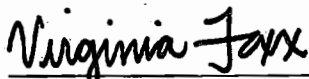
Rep. Jerry Moran



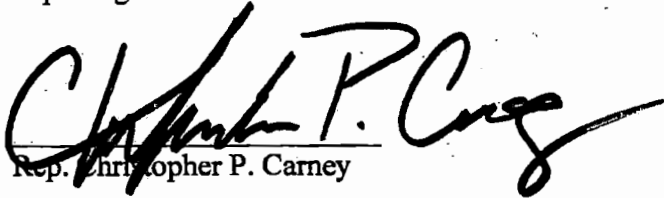
Rep. John Boozman



Rep. Donald A. Manzullo



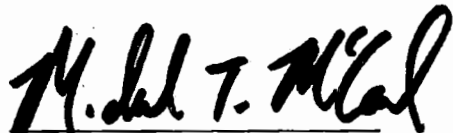
Rep. Virginia Foxx



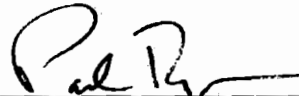
Rep. Christopher P. Carney



Rep. Marsha Blackburn



Rep. Michael T. McCaul



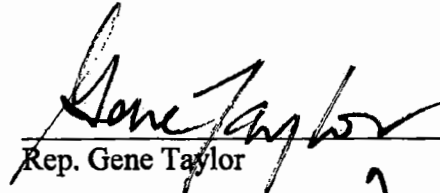
Rep. Paul Ryan



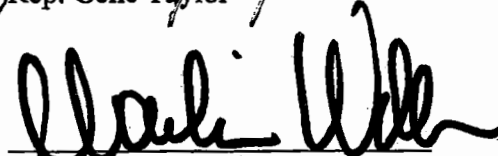
Rep. Jo Bonner



Rep. Michael K. Simpson



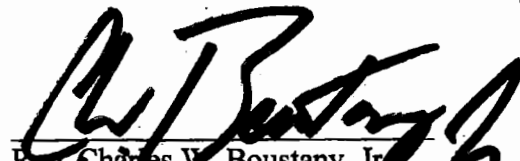
Rep. Gene Taylor



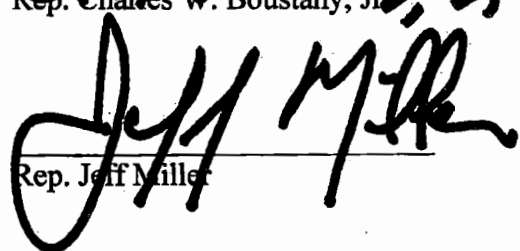
Rep. Charles A. Wilson



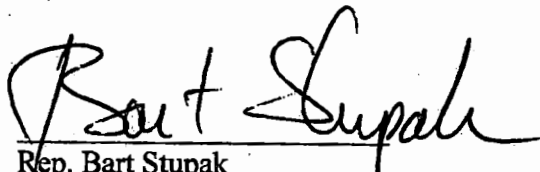
Rep. Ciro D. Rodriguez



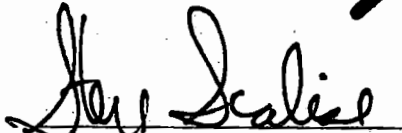
Rep. Charles W. Boustany, Jr.



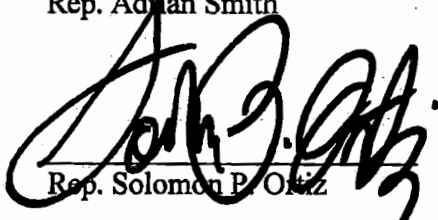
Rep. Jeff Miller


Rep. Bart Stupak


Rep. Fred Upton


Rep. Steve Scalise


Rep. Adrian Smith


Rep. Solomon P. Ortiz

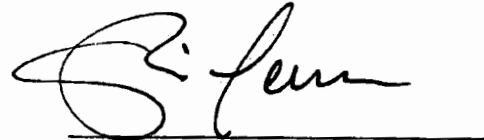

Rep. Steve Austria


Rep. Sue Wilkins Merrick

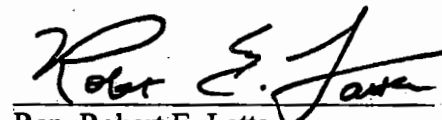

Rep. John A. Boehner


Rep. Duncan Hunter

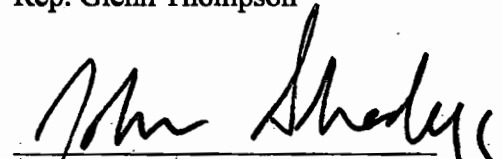

Rep. Howard Coble

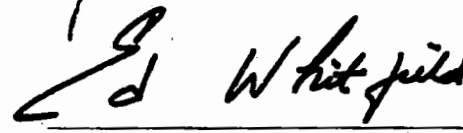

Rep. Mike Pence

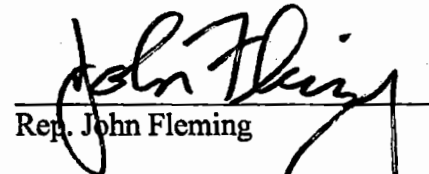

Rep. Harold Rogers

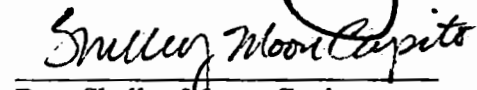

Rep. Robert E. Latta



Rep. Glenn Thompson


Rep. John B. Shadegg



Rep. Ed Whitfield



Rep. John Fleming

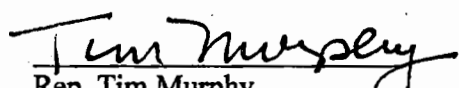

Rep. Shelley Moore Capito


Rep. Dean Heller

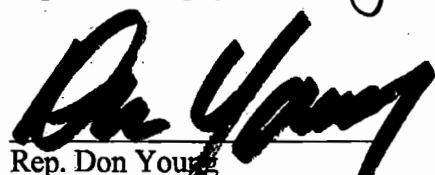

Rep. Kathleen A. Dahlkemper



Rep. John Sullivan


Rep. John Shimkus



Rep. Tim Murphy



Rep. Roy Blunt


Rep. Don Young

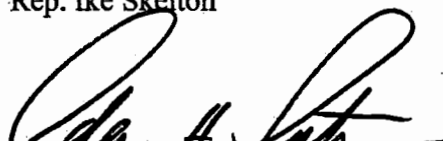

Rep. Candice S. Miller


Rep. Larry Kissell


Rep. Geoff Davis



Rep. Ike Skelton

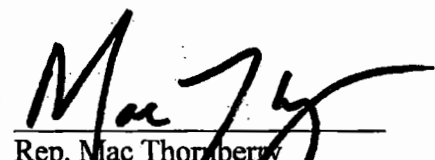

Rep. Jeb Hensarling


Rep. Adam H. Putnam


Rep. Jason Altmire


Rep. Steven C. LaTourette


Rep. Robert B. Aderholt


Rep. Mac Thornberry


Rep. Walter B. Jones



Rep. Jason Chaffetz



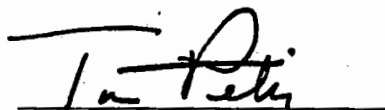
Rep. Baron P. Hill



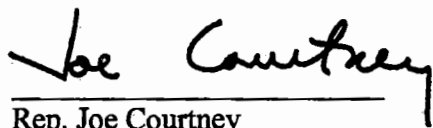
Rep. Robert J. Wittman



Rep. Michele Bachmann



Rep. Thomas E. Petri



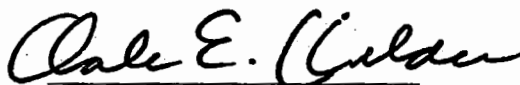
Rep. Joe Courtney



Rep. Paul C. Broun, M.D.



Rep. David P. Roe



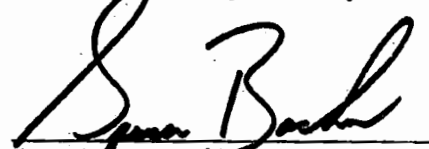
Rep. Dale E. Kildee



Rep. Ken Calvert



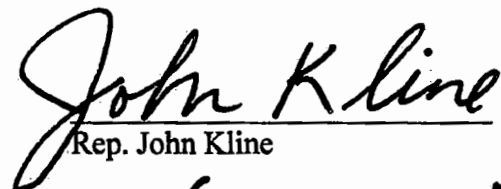
Rep. Mike McIntyre



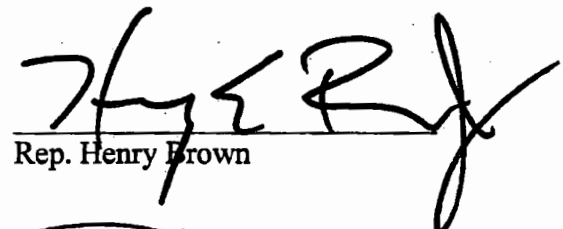
Rep. Spencer Bachus



Rep. Peter A. DeFazio



Rep. John Kline



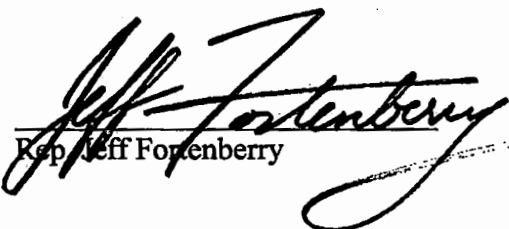
Rep. Henry Brown



Rep. Patrick J. Tiberi



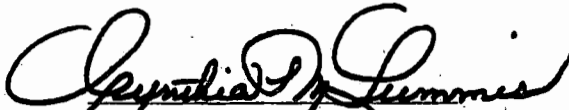
Rep. Barney Frank



Rep. Jeff Fortenberry

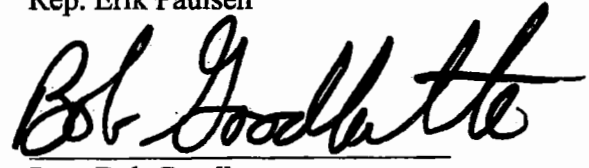

Rep. Lynn Jenkins


Rep. K. Michael Conaway


Rep. Cynthia Lummis


Rep. Erik Paulsen


Rep. Tom Graves


Rep. Bob Goodlatte


Rep. Mike Coffman


Rep. Ron Kind



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 2010

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Michael T. McCaul
U.S. House of Representatives
Washington, DC 20515-4310

Dear Congressman McCaul:

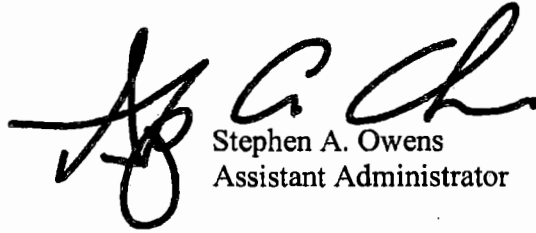
Thank you for your letter of October 1, 2010, to the U.S. Environmental Protection Agency's (EPA's) Administrator, Lisa Jackson, regarding an August 3, 2010, petition the Agency has received from the American Bird Conservancy and a number of other groups requesting that the EPA take action under the Toxic Substances Control Act (TSCA) to prohibit the manufacture, processing, and distribution in commerce of lead shot, bullets, and fishing sinkers. EPA denied the portion of the petition related to lead in ammunition on August 27, 2010, because the Agency does not have the legal authority to regulate this type of product under TSCA.

On behalf of the Administrator, I am writing to inform you that we have completed our review of the remaining portion of the petition and have determined that the petitioners did not demonstrate that the request for a uniform national ban of lead in fishing gear is necessary to protect against an unreasonable risk of injury to health or the environment, as required by TSCA section 21. EPA also determined that the petition did not demonstrate that the action requested is the least burdensome alternative to adequately protect against the concerns, as required by section 6 of TSCA. For these reasons, EPA denied the petitioners' request for a national ban on lead in all fishing gear.

EPA believes that the petition does not provide a sufficient justification for why a national ban of lead fishing sinkers and other lead fishing tackle is necessary given the actions being taken to address the concerns identified in the petition. There are an increasing number of limitations on the use of lead fishing gear on some Federal lands, as well as Federal outreach efforts. A number of states have established regulations that ban or restrict the use of lead sinkers and have created state education and fishing tackle exchange programs over the last decade. The emergence of these programs and activities over the past decade calls into question whether the broad rulemaking requested in the petition would be the least burdensome, adequately protective approach, as required by TSCA. We also noted to the petitioners that the prevalence of non-lead alternatives in the marketplace continues to increase.

Again, thank you for your letter and I hope the information on EPA's response to this petition is helpful to you. If you have additional questions, please feel free to contact me or your staff may contact Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. A. Owens', with a large, stylized initial 'S'.

Stephen A. Owens
Assistant Administrator

Congress of the United States
House of Representatives

Washington, DC 20515

October 30, 2013

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Room 300, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

Nearly eight years ago, Congress approved the Energy Policy Act of 2005, establishing the first Renewable Fuel Standard ("RFS"). In 2007, Congress significantly expanded the 2005 law when it passed the Energy Independence and Security Act of 2007, which increased the mandate to 36 billion gallons of biofuels by 2022. Unfortunately, despite the best intentions of the RFS, its premise and structure were based on many assumptions that no longer reflect the current market conditions, and the imposition of the 2014 volumes now threatens to cause economic and environmental harm. As Congress continues its bi-partisan work to address these concerns, we are writing to request that the EPA use its authority to adjust the 2014 RFS volumes.

As you are aware, the U.S. corn market has been increasingly volatile since the expansion of the RFS in 2007. This reflects the reality that more than 40 percent of the corn crop now goes into ethanol production, a dramatic rise since the first ethanol mandates were put into place in 2005. While well intentioned, the rigid nature of the federal law has not allowed it to change as new realities emerge in the market place. Ethanol now consumes more corn than animal agriculture, a fact directly attributable to the federal mandate. Corn prices are just one example of the economic harm caused by the RFS.

Due to the dramatic expansion of corn ethanol, volatile corn prices have led to the conversion of millions of acres of sensitive wetlands and grasslands into production. According to the EPA's analysis, the lifecycle emissions of corn ethanol in 2012 were higher than those of gasoline – and will be for years to come. Despite promised environmental benefits when the RFS was implemented, the National Academy of Sciences has noted that overall ethanol production and use lowers air and water quality.

Perhaps the newest challenge is the imposition of the statutory requirement of 18.15 billion gallons of renewable fuels in 2014, of which approximately 14.4 billion gallons will be made up by corn ethanol. In particular, the combination of rising ethanol mandates and declining gasoline demand has exacerbated the onset of the E10 blendwall- the point at which the gasoline supply is saturated with the maximum amount of ethanol that current vehicles, engines, and infrastructure can safely accommodate. The EPA explicitly acknowledged this challenge in its final rule implementing the 2013 volumes—"EPA does not currently foresee a scenario in which the market could consume enough ethanol sold in blends greater than E10, and/or produce sufficient volumes of non-ethanol biofuels to meet the volumes of total renewable fuel and advanced biofuel as required by statute for 2014."¹ We understand that the EPA signaled its intention to address these concerns in the 2014 rulemaking and commend the EPA's willingness to use the authority Congress granted to it when crafting the RFS.

While the blendwall is a pressing issue, the federal government can help avoid a dangerous economic situation by adjusting the normally rigid Renewable Fuel Standard mandate down to align with gasoline market conditions and realities. We therefore urge the EPA to consider a fair and meaningful nationwide adjustment to the ethanol mandate in the Renewable Fuel Standard. Prompt action by the EPA can help to ease short supply concerns, prevent engine damage, save jobs across many U.S. industries, and keep families fed. We strongly urge you to exercise your authority and take the necessary steps to protect American consumers and the economy. Thank you for your immediate consideration of this request.

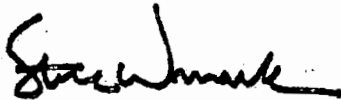
Sincerely,



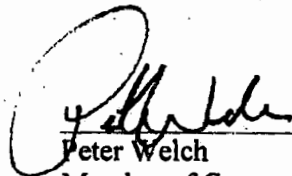
Bob Goodlatte
Member of Congress



Jim Costa
Member of Congress




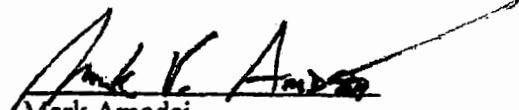
Steve Womack
Member of Congress



Peter Welch
Member of Congress

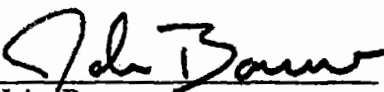
¹ Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards, 78 Fed. Reg. 49,794, 49,823 (Aug. 15, 2013) (to be codified at 40 C.F.R. pt. 80).



Robert Aderholt
Member of Congress

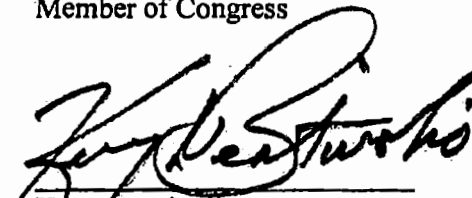

Mark Amodei
Member of Congress



Robert Andrews
Member of Congress

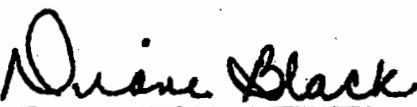

Lou Barletta
Member of Congress

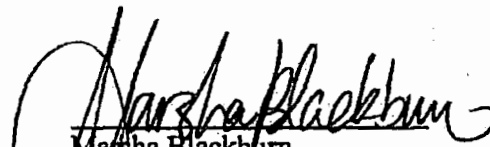

John Barrow
Member of Congress

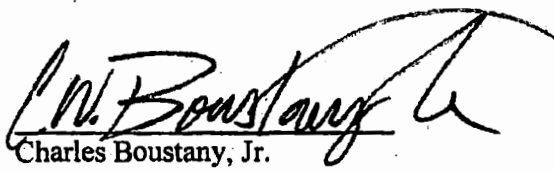

Dan Benishek
Member of Congress

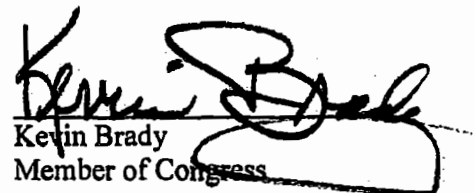

Kerry Bentivolio
Member of Congress

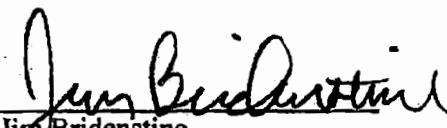

Gus Bilirakis
Member of Congress

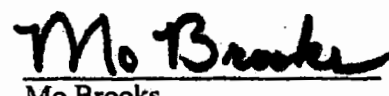

Diane Black
Member of Congress



Marsha Blackburn
Member of Congress

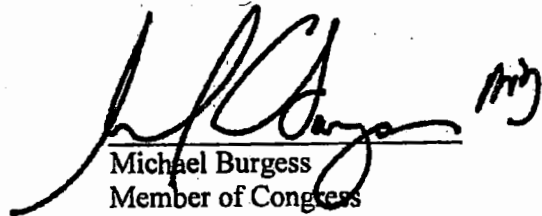

Charles Boustany, Jr.
Member of Congress


Kevin Brady
Member of Congress

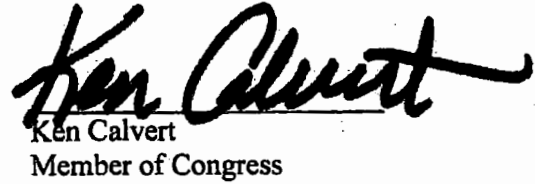

Jim Bridenstine
Member of Congress

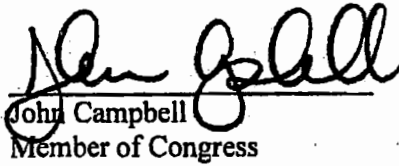

Mo Brooks
Member of Congress


Paul Broun
Member of Congress

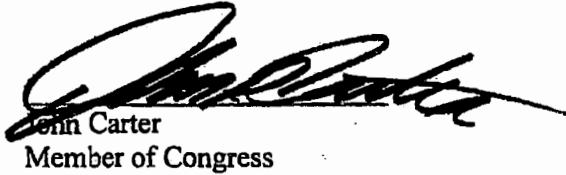

Michael Burgess
Member of Congress

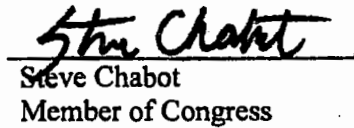

G.K. Butterfield
Member of Congress

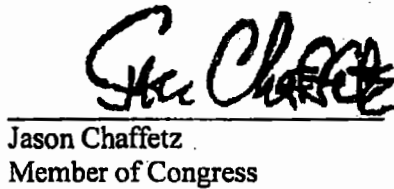

Ken Calvert
Member of Congress

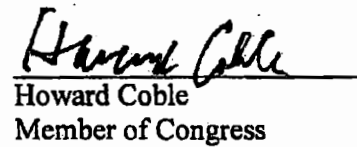

John Campbell
Member of Congress

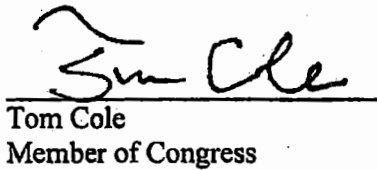

Shelley Moore Capito
Member of Congress

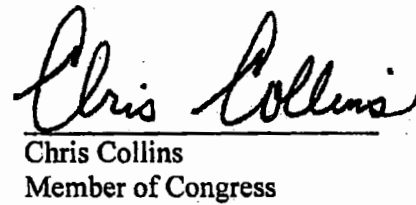

John Carter
Member of Congress

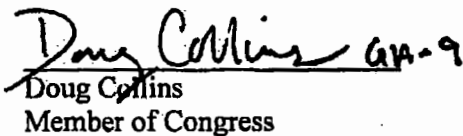

Steve Chabot
Member of Congress

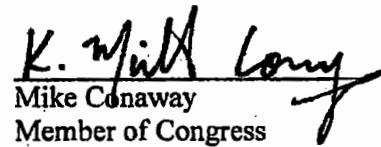

Jason Chaffetz
Member of Congress

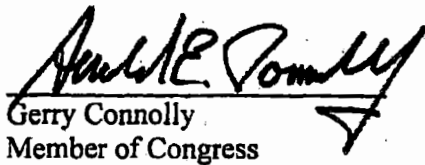

Howard Coble
Member of Congress

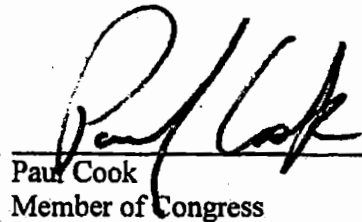

Tom Cole
Member of Congress

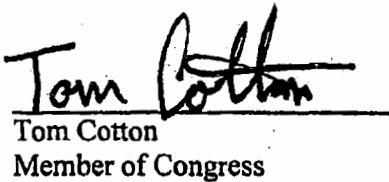

Chris Collins
Member of Congress

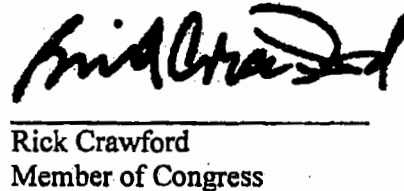

Doug Collins
Member of Congress

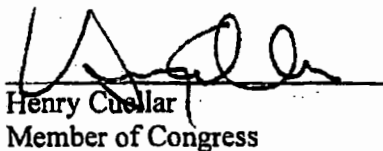

Mike Conaway
Member of Congress

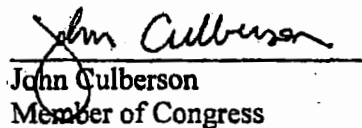

Gerry Connolly
Member of Congress

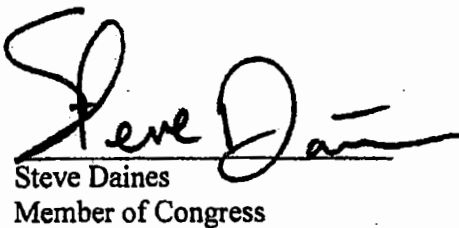

Paul Cook
Member of Congress


Tom Cotton
Member of Congress

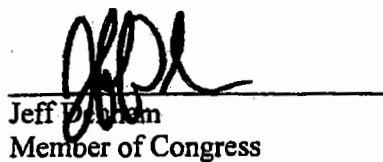

Rick Crawford
Member of Congress

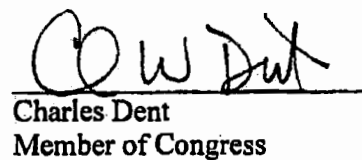

Henry Cuellar
Member of Congress

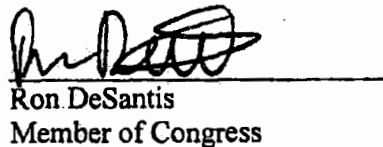

John Culberson
Member of Congress

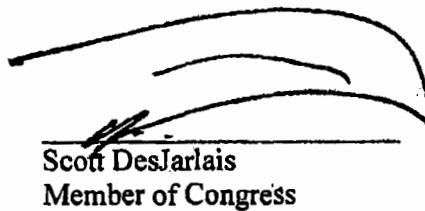

Steve Daines
Member of Congress

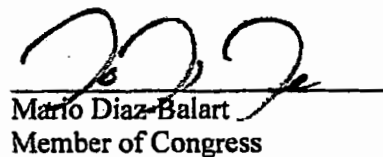

Peter DeFazio
Member of Congress


Jeff Duncan
Member of Congress

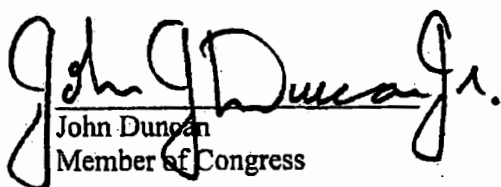

Charles Dent
Member of Congress

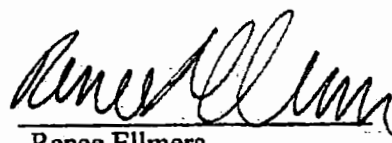

Ron DeSantis
Member of Congress



Scott DesJarlais
Member of Congress

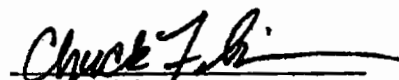

Mario Diaz-Balart
Member of Congress

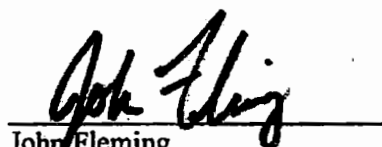

Jeff Duncan
Member of Congress

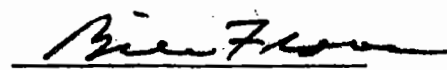

John Duncan
Member of Congress



Renee Ellmers
Member of Congress

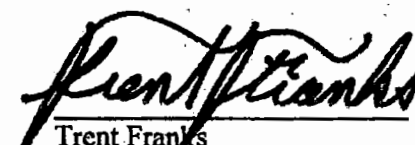

Blake Farenthold
Member of Congress

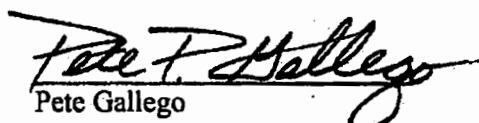

Chuck Fleischmann
Member of Congress



John Fleming
Member of Congress

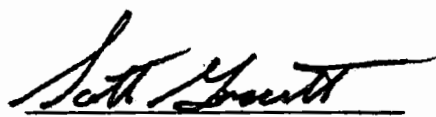

Bill Flores
Member of Congress


Virginia Foxx
Member of Congress

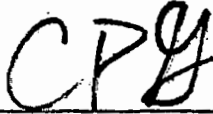

Trent Franks
Member of Congress


Pete Gallego
Member of Congress

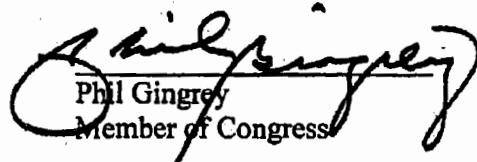

John Garamendi
Member of Congress


Scott Garrett
Member of Congress


Jim Gerlach
Member of Congress



Chris Gibson
Member of Congress



Phil Gingrey
Member of Congress



Louie Gohmert
Member of Congress



Paul Gosar
Member of Congress



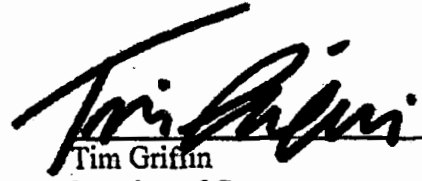
Kay Granger
Member of Congress



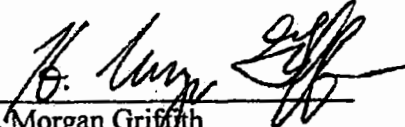
Tom Graves
Member of Congress



Gene Green
Member of Congress



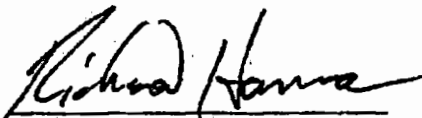
Tim Griffin
Member of Congress



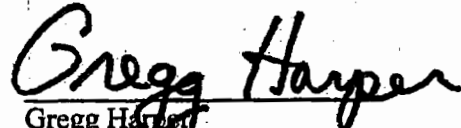
H. Morgan Griffith
Member of Congress



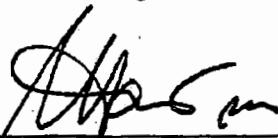
Ralph Hall
Member of Congress



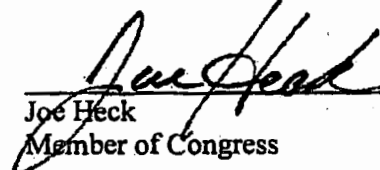
Richard Hanna
Member of Congress



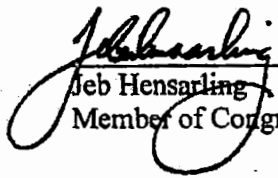
Gregg Harper
Member of Congress

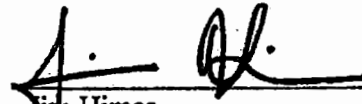


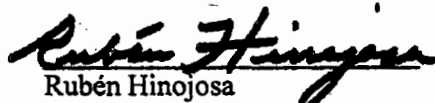
Andy Harris
Member of Congress




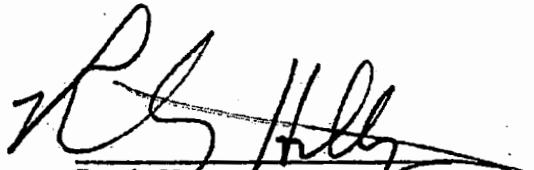
Joe Heck
Member of Congress

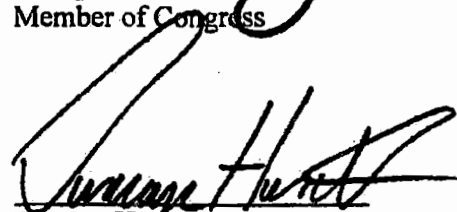

Jeb Hensarling
Member of Congress

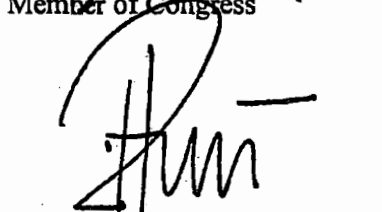

Jim Himes
Member of Congress

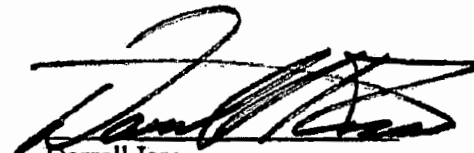

Rubén Hinojosa
Member of Congress



George Holding
Member of Congress



Randy Hultgren
Member of Congress



Duncan Hunter
Member of Congress



Robert Hurt
Member of Congress

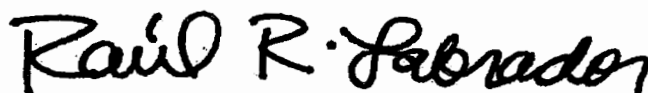

Darrell Issa
Member of Congress

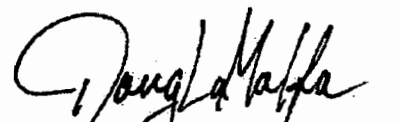

Sam Johnson
Member of Congress


Walter Jones
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Jack Kingston
Member of Congress

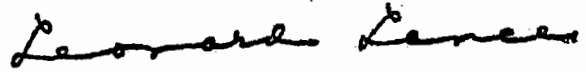

Ann McLane Kuster
Member of Congress


Raul Labrador
Member of Congress

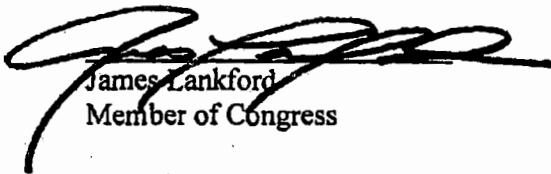

Doug LaMalfa
Member of Congress



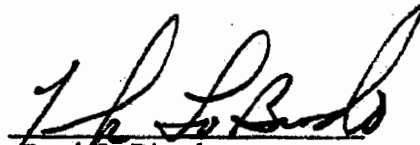
Doug Lamborn
Member of Congress



Leonard Lance
Member of Congress



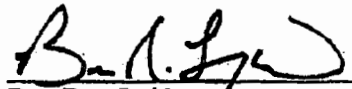
James Lankford
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Frank LoBiondo
Member of Congress




Billy Long
Member of Congress



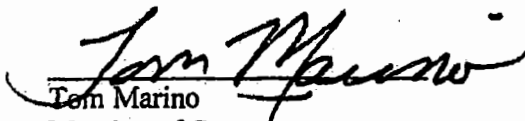
Ben Ray Lujan
Member of Congress



Cynthia Lummis
Member of Congress



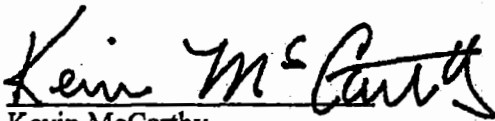
Kenny Marchant
Member of Congress




Tom Marino
Member of Congress



Jim Matheson
Member of Congress



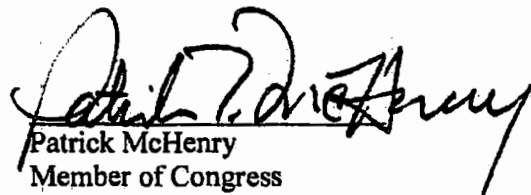
Kevin McCarthy
Member of Congress



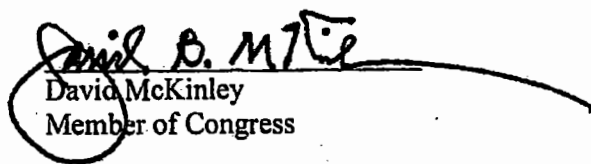
Michael McCaul
Member of Congress

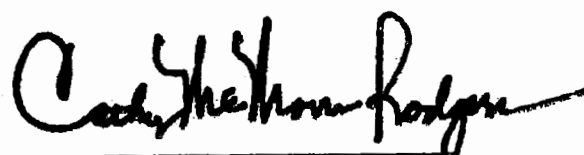


Tom McClintock
Member of Congress

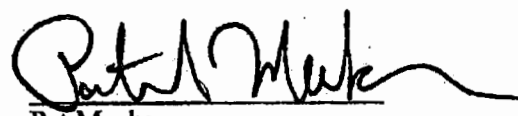


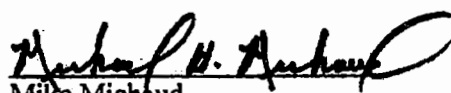
Patrick McHenry
Member of Congress

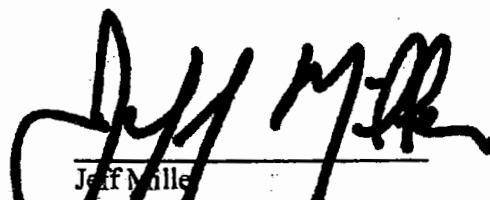

David McKinley
Member of Congress

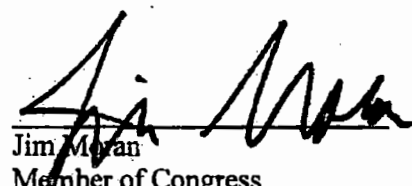

Cathy McMorris Rodgers
Member of Congress



Mark Meadows
Member of Congress

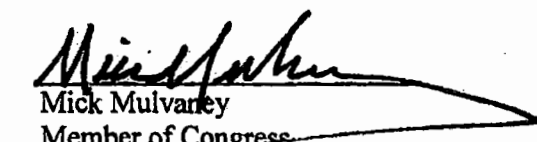

Pat Meehan
Member of Congress



Mike Michaud
Member of Congress

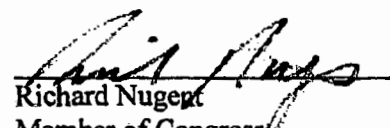

Jeff Miller
Member of Congress

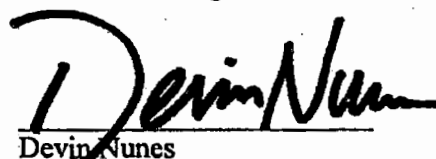

Jim Moran
Member of Congress

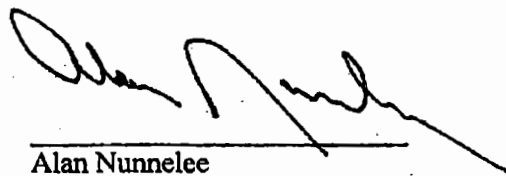

Markwayne Mullin
Member of Congress

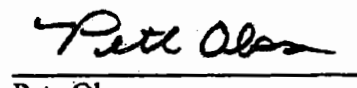

Mick Mulvaney
Member of Congress


Randy Neugebauer
Member of Congress


Richard Nugent
Member of Congress

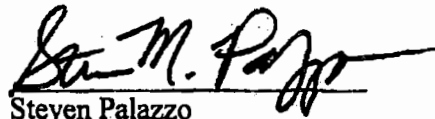

Devin Nunes
Member of Congress


Alan Nunnelee
Member of Congress


Pete Olson
Member of Congress



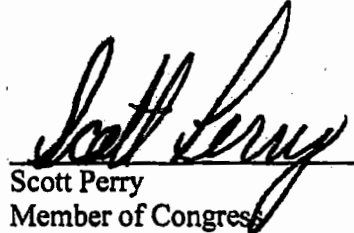
Bill Owens
Member of Congress



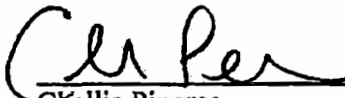
Steven Palazzo
Member of Congress



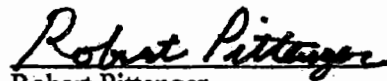
Steve Pearce
Member of Congress



Scott Perry
Member of Congress



Chellie Pingree
Member of Congress



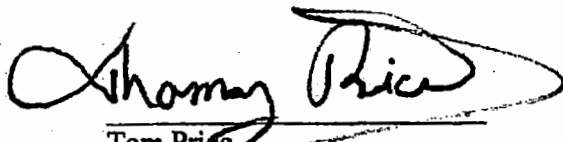
Robert Pittenger
Member of Congress



Joe Pitts
Member of Congress



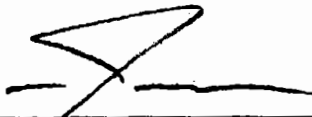
Ted Poe
Member of Congress



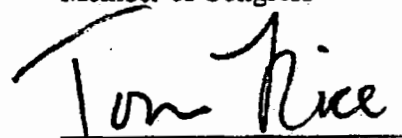
Tom Price
Member of Congress



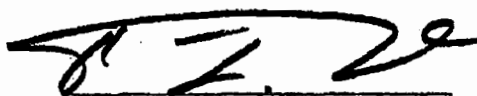
Trey Ragel
Member of Congress



Tom Reed
Member of Congress



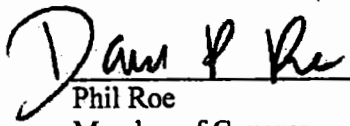
Tom Rice
Member of Congress

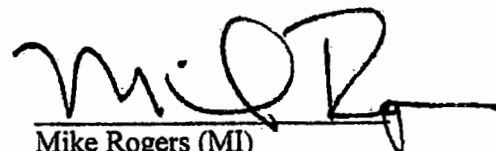


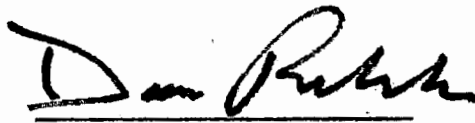
Cedric Richmond
Member of Congress

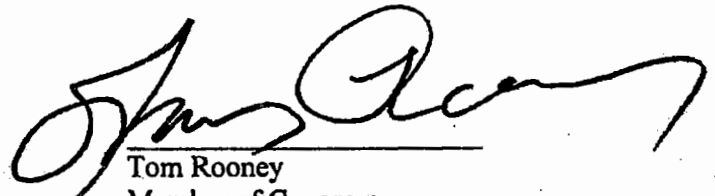


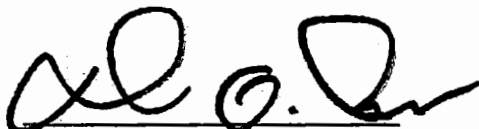
Scott Rigell
Member of Congress

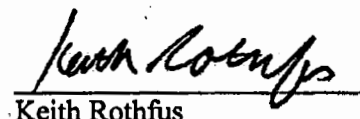

Phil Roe
Member of Congress

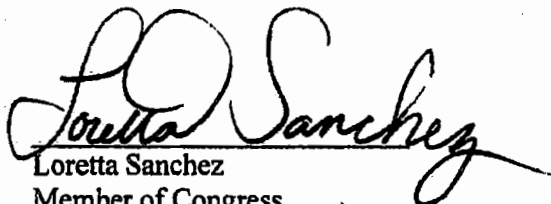

Mike Rogers (MI)
Member of Congress



Dana Rohrabacher
Member of Congress


Tom Rooney
Member of Congress

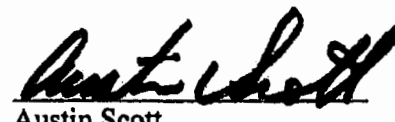

Dennis Ross
Member of Congress



Keith Rothfus
Member of Congress

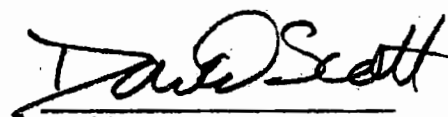

Loretta Sanchez
Member of Congress

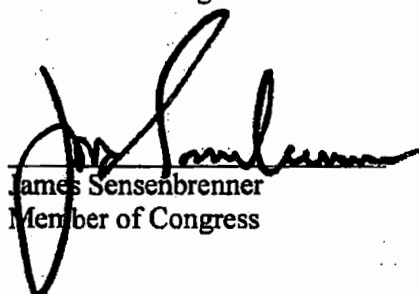

Kurt Schrader
Member of Congress

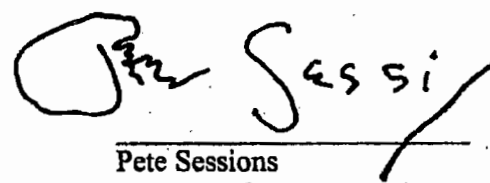

David Schweikert
Member of Congress

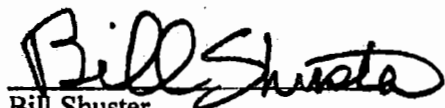

Austin Scott
Member of Congress

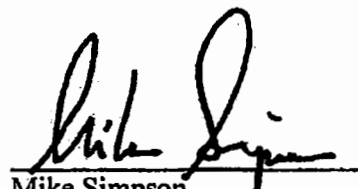

Bobby Scott
Member of Congress

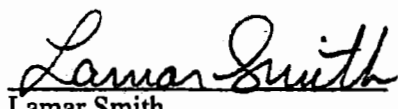

David Scott
Member of Congress

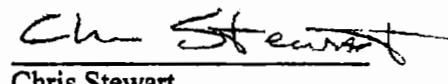

James Sensenbrenner
Member of Congress



Pete Sessions
Member of Congress

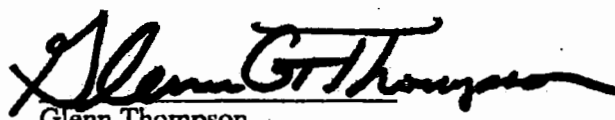

Bill Shuster
Member of Congress

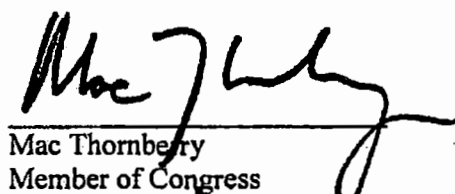

Mike Simpson
Member of Congress



Lamar Smith
Member of Congress

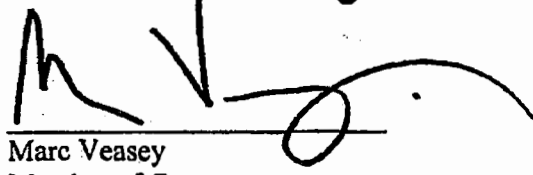

Chris Stewart
Member of Congress

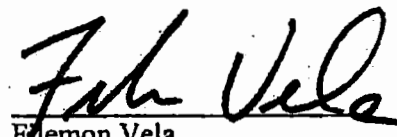

Bennie Thompson
Member of Congress



Glenn Thompson
Member of Congress



Mac Thornberry
Member of Congress

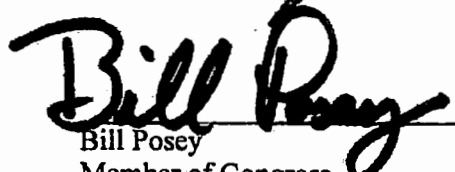

David Valadao
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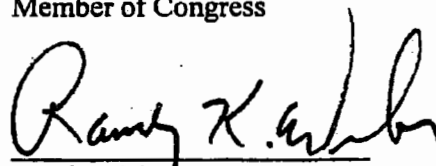

Marc Veasey
Member of Congress


Filemon Vela
Member of Congress


Tim Walberg
Member of Congress


Greg Walden
Member of Congress


Bill Posey
Member of Congress


Randy Weber
Member of Congress



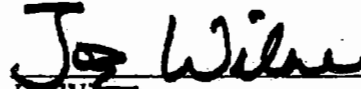
Daniel Webster
Member of Congress



Lynn Westmoreland
Member of Congress



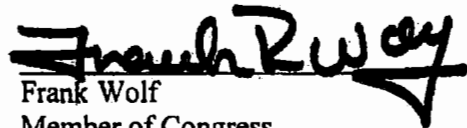
Roger Williams
Member of Congress




Joe Wilson
Member of Congress



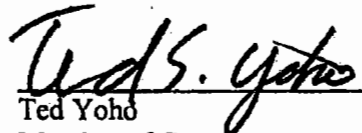
Robert Wittman
Member of Congress



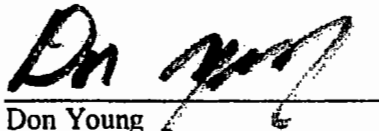
Frank Wolf
Member of Congress



Rob Woodall
Member of Congress



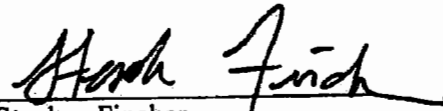
Ted Yoho
Member of Congress



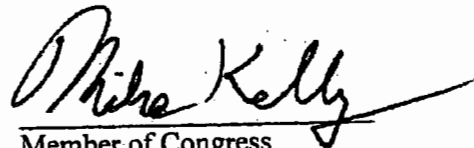
Don Young
Member of Congress




Rodney P. Frelinghuysen
Member of Congress



Stephen Fincher
Member of Congress



Member of Congress



Member of Congress

Member of Congress

AL-14-000-7245

Congress of the United States
Washington, DC 20515

May 1, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable John M. McHugh
Secretary
Department of the Army
The Pentagon, Room 3E700
Washington, D.C. 20310

Dear Administrator McCarthy and Secretary McHugh:

We write to express our serious concerns with the proposed rule re-defining the scope of federal power under the Clean Water Act (CWA) and ask you to return this rule to your Agencies in order to address the legal, economic, and scientific deficiencies of the proposal.

On March 25, 2014, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) released a proposed rule that would assert CWA jurisdiction over nearly all areas with any hydrologic connection to downstream navigable waters, including man-made conveyances such as ditches. Contrary to your agencies' claims, this would directly contradict prior U.S. Supreme Court decisions, which imposed limits on the extent of federal CWA authority. Although your agencies have maintained that the rule is narrow and clarifies CWA jurisdiction, it in fact aggressively expands federal authority under the CWA while bypassing Congress and creating unnecessary ambiguity. Moreover, the rule is based on incomplete scientific and economic analyses.

The rule is flawed in a number of ways. The most problematic of these flaws concerns the significant expansion of areas defined as "waters of the U.S." by effectively removing the word "navigable" from the definition of the CWA. Based on a legally and scientifically unsound view of the "significant nexus" concept espoused by Justice Kennedy, the rule would place features such as ditches, ephemeral drainages, ponds (natural or man-made), prairie potholes, seeps, flood plains, and other occasionally or seasonally wet areas under federal control.

Additionally, rather than providing clarity and making identifying covered waters "less complicated and more efficient," the rule instead creates more confusion and will inevitably cause unnecessary litigation. For example, the rule heavily relies on undefined or vague concepts such as "riparian areas," "landscape unit," "floodplain," "ordinary high water mark" as determined by the agencies' "best professional judgment" and "aggregation." Even more egregious, the rule throws into confusion extensive state regulation of point sources under various CWA programs.

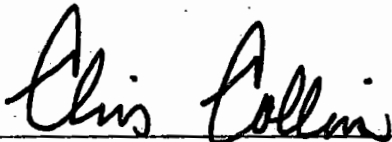
In early December of 2013, your agencies released a joint analysis stating that this rule would subject an additional three percent of U.S. waters and wetlands to CWA jurisdiction and that the rule would create an economic benefit of at least \$100 million annually. This calculation is seriously flawed. In this analysis, the EPA evaluated the FY 2009-2010 requests for jurisdictional determinations – a period of time that was the most economically depressed in

nearly a century. This period, for example, saw extremely low construction activity and should not have been used as a baseline to estimate the incremental acreage impacted by this rule. In addition, the derivation of the three percent increase calculation did not take into account the landowners who – often at no fault of their own – do not seek a jurisdictional determination, but rather later learn from your agencies that their property is subject to the CWA. These errors alone, which are just two of many in EPA's assumptions and methodology, call into question the veracity of any of the conclusions of the economic analysis.

Compounding both the ambiguity of the rule and the highly questionable economic analysis, the scientific report – which the agencies point to as the foundation of this rule – has been neither peer-reviewed nor finalized. The EPA's draft study, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," was sent to the EPA's Science Advisory Board to begin review on the same day the rule was sent to OMB for interagency review. The science should always come before a rulemaking, especially in this instance where the scientific and legal concepts are inextricably linked.

For all these reasons, we ask that this rule be withdrawn and returned to your agencies. This rule has been built on an incomplete scientific study and a flawed economic analysis. We therefore ask you to formally return this rule to your agencies.

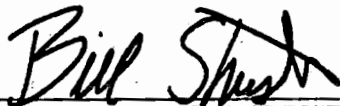
Sincerely,



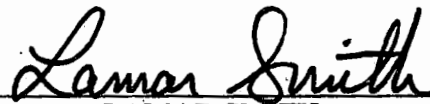
CHRIS COLLINS
Member of Congress



KURT SCHRADER
Member of Congress



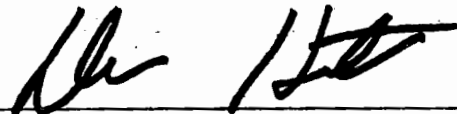
BILL SHUSTER
Chairman
House Committee on
Transportation and Infrastructure



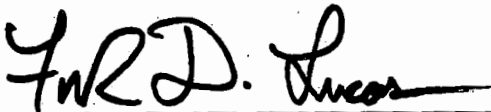
LAMAR SMITH
Chairman
House Committee on
Science, Space, and Technology



FRED UPTON
Chairman
House Committee on
Energy and Commerce



DOC HASTINGS
Chairman
House Committee on
Natural Resources



FRANK LUCAS
Chairman
House Committee on Agriculture



COLLIN PETERSON
Ranking Member
House Committee on Agriculture

Ed Whitfield

Ken Calvert

Rene Lambert

Jim Walker

Steve King

JT Smith

Dr Yarny

Dan Riker

John Koster

Fah Uela

Bill By

M.C.

Rene E. Jatta

Lee Terry
Lynn Baker

Cedric Barber

John G. Manning

John Banner

Walter B. Jones

Mike Simpson

~~Charles B. Akers~~

Bill Owens

Tom Sullivan

Jim Sundman WI-05

Robert J. Withers VA-01

Pat Tiller

~~Lyndell P. Summies~~

Jeff Sumner

~~Bob~~

Tim Hurling

Marsha Blackburn

Ken Yerkes

John White

Cond Roberts

Fang

Paul V. Huns

Carla J

Melvin P. Tompso

Joe Baratta

Mike Varenthal

John Henry

Gene Quinn

Jim Bradstreet

Long Adams

Pat

Chuck Fleish

Kevin Scott

Rita Nam

Thomas Massie

Brett Guthrie

Jan Jan M.C.

Ch Stewart

Ann Sch

Larry Buehler

Tom Figue

Kay Stanger

Bill Fum

16 Mar 1991

Myr Fink

D. Buehler

Bill Caridy

Gregg Harper

Glen GT Thompson

Archie Rye (M-03)

La Van

Jayong

Vicky Hartzler

Lynne Jenkins

Ken Cunn

Steve Womack

Robert Williams

Jaime Herrera Beutler

Terri Swell

Tim G.P.L. (AR-02)

Fred R. Wansley

Art P. O.

Dan J. H.

Alan J.

Paul N.

Dillon Song

Susan W. Brooks

Mark Kelly

J. J.

Bill Johnson

Andreas

Bill Huizenga

Mike H.

Art H.

Andy B.

Paul R.

Raul R. Labrador

Andreas

Bill

William S.

R. Woodall

CPH

Quinn Black

Mo Brooks

B

Kerry Hault

Hunt Jr

Ch Bon Tam

Nike Stett

John Culberson

Dr. M. Zilinski

Luke Menna

Mark Wayne Mullin

Pat Sk

Lon B. Agel

Ch. Jr

Hunt

Sam Johnson

Mark Skelton

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CE W. Dnt

Luke Krystas

Jeffrey Mays

Tom Perkins

Tom Rice

John H. Rice MS 4

John A. MAI-03

Robert Pittenger

Pete Olson

Paul H.

H. Viny

S. Holy

Rene J. Lla

Kevin M. Cant

Virginia Cox

Max H. L.

Kevin E. R.

Thomas J. R.

Erik Paulsen

Joe Heck

John E.

Tom Mariner

Darin Noveck

Michael A. Armon

K. Mitt

Jim

Steve Chabot

Ruben Hengria

Greg Walden

Howard Cobb

Ja Borton

Frankie Wemy

P Rankin

Kay Bertrich

Cash McHorn-Rodger

Paul Cook

Shane Red-Heffer

Jim Rahall

Joe Wilson

Scott Smith

Michael R. Jensen

Angie Smith



Patrick McHugh

Howard C. Bud McCon

Member	Party	District
Don Young	R	AK-AL
Bradley Byrne	R	AL-1
Martha Roby	R	AL-2
Mike Rogers	R	AL-3
Robert Aderholt	R	AL-4
Mo Brooks	R	AL-5
Spencer Bachus	R	AL-6
Terri Sewell	D	AL-7
Rick Crawford	R	AR-1
Tim Griffin	R	AR-2
Steve Womack	R	AR-3
Tom Cotton	R	AR-4
Paul Gosar	R	AZ-4
Matt Salmon	R	AZ-5
David Schweikert	R	AZ-6
Trent Franks	R	AZ-8
Doug LaMalfa	R	CA-1
Jeff Denham	R	CA-10
Jim Costa	D	CA-16
David Valadao	R	CA-21
Devin Nunes	R	CA-22
Kevin McCarthy	R	CA-22
Howard "Buck" McKeon	R	CA-25
Gary Miller	R	CA-31
Tom McClintock	R	CA-4
Ken Calvert	R	CA-42
Dana Rohrabacher	R	CA-48
Darrell Issa	R	CA-49
Paul Cook	R	CA-8
Scott Tipton	R	CO-3
Cory Gardner	R	CO-4
Doug Lamborn	R	CO-5
Mike Coffman	R	CO-6
Jeff Miller	R	FL-1
Rich Nugent	R	FL-11
Gus Bilirakis	R	FL-12
Tom Rooney	R	FL-17
Steve Southerland	R	FL-2
Mario Diaz-Balart	R	FL-25
Ileana Ros-Lehtinen	R	FL-27
Ted Yoho	R	FL-3
Ron DeSantis	R	FL-6
John Mica	R	FL-7
Jack Kingston	R	GA-1
Paul Broun	R	GA-10
Phil Gingrey	R	GA-11

John Barrow	D	GA-12
David Scott	D	GA-13
Tom Graves	R	GA-14
Sanford Bishop	D	GA-2
Lynn Westmoreland	R	GA-3
Tom Price	R	GA-6
Rob Woodall	R	GA-7
Austin Scott	R	GA-8
Doug Collins	R	GA-9
Tom Latham	R	IA-3
Steve King	R	IA-5
Raul Labrador	R	ID-1
Michael Simpson	R	ID-2
William Enyart	D	IL-12
Rodney Davis	R	IL-13
Randy Hultgren	R	IL-14
John Shimkus	R	IL-15
Adam Kinzinger	R	IL-16
Aaron Schock	R	IL-18
Peter Roskam	R	IL-6
Jackie Walorski	R	IN-2
Marlin Stutzman	R	IN-3
Todd Rokita	R	IN-4
Susan Brooks	R	IN-5
Luke Messer	R	IN-6
Larry Bucshon	R	IN-8
Todd Young	R	IN-9
Tim Huelskamp	R	KS-1
Lynn Jenkins	R	KS-2
Kevin Yoder	R	KS-3
Mike Pompeo	R	KS-4
Ed Whitfield	R	KY-1
Brett Guthrie	R	KY-2
Thomas Massie	R	KY-4
Hal Rogers	R	KY-5
Andy Barr	R	KY-6
Cedric Richmond	D	LA-2
Charles Boustany	R	LA-3
John Fleming	R	LA-4
Vance McAllister	R	LA-5
Bill Cassidy	R	LA-6
Andy Harris	R	MD-1
Dan Benishek	R	MI-1
Candice Miller	R	MI-10
Kerry Bentivolio	R	MI-11
Bill Huizenga	R	MI-2
Justin Amash	R	MI-3

Dave Camp	R	MI-4
Fred Upton	R	MI-6
Tim Walberg	R	MI-7
Mike Rogers	R	MI-8
John Kline	R	MN-2
Erik Paulsen	R	MN-3
Michele Bachmann	R	MN-6
Collin Peterson	D	MN-7
Ann Wagner	R	MO-2
Blaine Luetkemeyer	R	MO-3
Vicky Hartzler	R	MO-4
Sam Graves	R	MO-6
Billy Long	R	MO-7
Jason Smith	R	MO-8
Alan Nunnelee	R	MS-1
Bennie G. Thompson	D	MS-2
Gregg Harper	R	MS-3
Steven Palazzo	R	MS-4
Patrick McHenry	R	NC-10
Mark Meadows	R	NC-11
George Holding	R	NC-13
Renee Ellmers	R	NC-2
Walter Jones	R	NC-3
Virginia Foxx	R	NC-5
Howard Coble	R	NC-6
Mike McIntyre	D	NC-7
Richard Hudson	R	NC-8
Robert Pittenger	R	NC-9
Kevin Cramer	R	ND-AL
Lee Terry	R	NE-2
Adrian Smith	R	NE-3
Scott Garrett	R	NJ-5
Steve Pearce	R	NM-2
Mark Amodei	R	NV-2
Joe Heck	R	NV-3
Michael Grimm	R	NY-11
Chris Gibson	R	NY-19
Peter King	R	NY-2
Bill Owens	D	NY-21
Richard Hanna	R	NY-22
Tom Reed	R	NY-23
Chris Collins	R	NY-27
Steve Chabot	R	OH-1
Michael Turner	R	OH-10
Patrick Tiberi	R	OH-12
David Joyce	R	OH-14
Steve Stivers	R	OH-15

Jim Renacci	R	OH-16
Brad Wenstrup	R	OH-2
Jim Jordan	R	OH-4
Robert Latta	R	OH-5
Bill Johnson	R	OH-6
Bob Gibbs	R	OH-7
Jim Bridenstine	R	OK-1
Markwayne Mullin	R	OK-2
Frank Lucas	R	OK-3
James Lankford	R	OK-5
Greg Walden	R	OR-2
Kurt Schrader	D	OR-5
Tom Marino	R	PA-10
Lou Barletta	R	PA-11
Keith Rothfus	R	PA-12
Charlie Dent	R	PA-15
Joe Pitts	R	PA-16
Tim Murphy	R	PA-18
Mike Kelly	R	PA-3
Scott Perry	R	PA-4
Glenn 'GT' Thompson	R	PA-5
Jim Gerlach	R	PA-6
Patrick Meehan	R	PA-7
Mike Fitzpatrick	R	PA-8
Bill Shuster	R	PA-9
Mark Sanford	R	SC-1
Joe Wilson	R	SC-2
Jeff Duncan	R	SC-3
Mick Mulvaney	R	SC-5
Tom Rice	R	SC-7
Kristi Noem	R	SD-AL
Phil Roe	R	TN-1
John J. Duncan, Jr.	R	TN-2
Chuck Fleischmann	R	TN-3
Scott DesJarlais	R	TN-4
Diane Black	R	TN-6
Marsha Blackburn	R	TN-7
Stephen Fincher	R	TN-8
Louie Gohmert	R	TX-1
Michael McCaul	R	TX-10
K. Michael Conaway	R	TX-11
Kay Granger	R	TX-12
Mac Thornberry	R	TX-13
Randy Weber	R	TX-14
Ruben Hinojosa	D	TX-15
Bill Flores	R	TX-17
Randy Neugebauer	R	TX-19

Ted Poe	R	TX-2
Lamar Smith	R	TX-21
Pete Olson	R	TX-22
Pete Gallego	D	TX-23
Kenny Marchant	R	TX-24
Roger Williams	R	TX-25
Michael Burgess	R	TX-26
Blake Farenthold	R	TX-27
Henry Cuellar	D	TX-28
Sam Johnson	R	TX-3
John Carter	R	TX-31
Pete Sessions	R	TX-32
Marc Veasey	D	TX-33
Filemon Vela	D	TX-34
Steve Stockman	R	TX-36
Ralph Hall	R	TX-4
Jeb Hensarling	R	TX-5
Joe Barton	R	TX-6
John Culberson	R	TX-7
Kevin Brady	R	TX-8
Rob Bishop	R	UT-1
Chris Stewart	R	UT-2
Jason Chaffetz	R	UT-3
Jim Matheson	D	UT-4
Robert Wittman	R	VA-1
Frank Wolf	R	VA-10
Scott Rigell	R	VA-2
J. Randy Forbes	R	VA-4
Robert Hurt	R	VA-5
Bob Goodlatte	R	VA-6
Morgan Griffith	R	VA-9
Jaime Herrera Beutler	R	WA-3
Doc Hastings	R	WA-4
Cathy McMorris Rodgers	R	WA-5
Dave Reichert	R	WA-8
Paul Ryan	R	WI-3
Jim Sensenbrenner	R	WI-5
Tom Petri	R	WI-6
Sean Duffy	R	WI-7
Reid Ribble	R	WI-8
David McKinley	R	WV-1
Shelly Moore Capito	R	WV-2
Nick Rahall	D	WV-3
Cynthia Lummis	R	WY-AL

AL-14-001-0099

Congress of the United States
Washington, DC 20515

May 22, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

We write to express our concerns with the U.S. Environmental Protection Agency's (EPA) planned regulation of carbon dioxide (CO₂) emissions from existing electric generating units (EGUs) under Section 111(d) of the Clean Air Act (CAA). As we understand, a draft proposed rule, which could have a serious economic impact on the State of Texas, was forwarded by EPA to the Office of Management and Budget (OMB) for interagency review on March 31, 2014 with the timetable for a Notice of Proposed Rulemaking to be issued by June 1, 2014.

It is our position that climate change policy should be directed by Congress. The decision by EPA to move forward with rulemaking to regulate CO₂ emissions from existing EGUs raises serious legal and implementation questions. We share the view expressed by the Texas Commission on Environmental Quality and the Public Utility Commission of Texas that CAA Section 111(d) is not the appropriate vehicle for regulating CO₂ emissions from existing EGUs.¹

Texas leads the nation in population growth and electricity demand. With a robust manufacturing base, and as the leading producer of oil, gas and petrochemical products, our state is an economic engine for the entire nation. Texas has been able to take this leading role in large part due to the availability of reliable and affordable electricity generated by fossil-fuels such as coal, lignite, and petroleum coke. Given such growth and potential, EPA should recognize that Texans require an all-of-the-above approach to power generation, not one that will raise the cost of electricity by selectively eliminating certain types of fossil fuels.

Affordable and reliable energy is essential to future growth. Beyond ensuring a stable power supply, the industries built around fossil energy have a direct economic impact on local communities in Texas, including in rural areas. Consumer owned electric cooperatives, whose role it is to ensure delivery of affordable electricity, are particularly vulnerable to new power sector regulations. If regulatory changes result in the retirement of a significant amount of generation capacity, it will lead to higher electricity rates, threats to grid reliability, and a loss of jobs.

¹ Texas Commission on Environmental Quality and Public Utility Commission of Texas. Comments on CO₂ emissions for EGUs, Section 111(d) of the Clean Air Act. Submitted to the U.S. Environmental Protection Agency on January 14, 2014.

We are troubled by EPA's interpretation of its authority under the CAA. EPA should recognize the authority of states under Section 111(d) to determine for themselves standards of performance for existing sources. To the extent that EPA proceeds with regulations under Section 111(d) for EGUs, we request that EPA work with Congress and the State of Texas to ensure that the rights and interests of the state and its citizens are fully protected. Thank you for your prompt attention to our concerns. Should you have any questions, please contact Brandon Mooney in Congressman Barton's Office at (202) 225-2002 or Wendell Frank White Jr. in Congressman Cuellar's Office at (202) 225-1640.

Sincerely,

Joe Barton

Joe Barton
Member of Congress

Henry Cuellar

Henry Cuellar
Member of Congress

Lamar Smith

Ralph M. Hall

Randy K. Weber

John F. Carter

Pete P. Hall

B. Marlet

Sen. Jon

John Culberson

Shirley Lee

Mac Fleck

Ron Hunt

Peggy Seasholtz

Mind T. McCarl

Kenneth P. Rade

Peter O'Connor

Blake Farnethall

Branch

TK-19

Bin Fong

Gene Gray

Roger Williams

Felix Velg

Sam Johnson

Kay Searcy

ATMM

J. K. Searcy

John Hensley

K. M. Loney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 28 2014

OFFICE OF
AIR AND RADIATION

The Honorable Michael T. McCaul
U.S. House of Representatives
Washington, DC 20515

Dear Congressman McCaul:

Thank you for your letter of May 22, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy on the Clean Power Plan for Existing Power Plants, which was signed by the Administrator on June 2, 2014. The Administrator asked that I respond on her behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.

The Clean Power Plan aims to cut energy waste and leverage cleaner energy sources by doing two things. First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. Second, it empowers the states to chart their own paths to meet their goals. The proposal builds on what states, cities and businesses around the country are already doing to reduce carbon pollution, and when fully implemented in 2030, carbon emissions will be reduced by approximately 30 percent from the power sector across the United States when compared with 2005 levels. In addition, we estimate the proposal will cut the pollution that causes smog and soot by 25 percent, avoiding up to 100,000 asthma attacks and 2,100 heart attacks by 2020.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country, including several from Texas, to learn more about what programs are already working to reduce carbon pollution. These meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse, complex and interconnected.

We appreciate your providing your views about the effects of the proposal. As you know, we are currently seeking public comment on the proposal, and we encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. The public comment period will remain open for 120 days, until October 16, 2014. We have submitted your letter to the rulemaking docket, but you can submit additional comments via any one of these methods:

- Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR-2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at mackay.cheryl@epa.gov or at (202) 564-2023.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

AL-14-000-3283

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371
www.science.house.gov

December 19, 2013

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Administrator McCarthy,

Science is a valuable tool to help policymakers navigate complex issues. However, when inconvenient facts are disregarded or when dissenting voices are muzzled, a frank discussion becomes impossible. The Environmental Protection Agency (EPA) cannot continue to rush ahead with costly regulations without allowing time for a real-world look at the science.

We are concerned about the Agency's apparent disregard for the concerns of its science advisors. On December 3, 2013, Chairman Smith wrote to you about the troubling findings of the Science Advisory Board's (SAB) Work Group highlighting problems with the science that underlies the proposed New Source Performance Standards (NSPS) for power plants.¹ The Work Group showed that EPA rushed ahead with its costly power plant proposal without waiting for the advice of its independent science advisors and that the underlying science lacked adequate peer review.²

These discoveries raised serious questions about EPA's proposed rule and clearly merited further review. However, when these concerns were raised, a senior official in the EPA Air Office sought to distance the Agency from the criticisms leveled by the SAB Work Group. Specifically, the EPA claimed that the NSPS is not "setting any requirements on sequestration and not providing any analysis as such because we don't speak to the sequestration."³ The claim that the rule doesn't need to address storage concerns highlights your Agency's continued lack of transparency and consistent attempts to avoid accountability.

¹ Standards of Performance for Greenhouse Gas Emission from New Stationary Sources: Electric utility Generating Units (Sept. 20, 2013).

² Memorandum from SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science to Members of the Chartered SAB and SAB Liaisons, Nov. 12, 2013.

³ *SAB Suggests Dropping Review Of CCS In Utility NSPS After EPA Pushback*, InsideEPA, Dec. 5, 2013 (quoting Peter Tsirigotis, Director, Sector Policies and Programs Division, Office of Air and Radiation, US EPA).

While the Agency admitted that there are some unanswered scientific issues regarding carbon capture and storage (CCS) systems, the official noted that “most of those things are outside of this rulemaking.”⁴ Because long-term geologic storage encompasses new science and lacks a proven regulatory framework,⁵ EPA attempted to avoid the obvious questions regarding storage of carbon. In particular, EPA deflects the concerns raised by its science advisors by claiming that the charges of inadequate peer-review relate to studies beyond the scope of the NSPS proposal. In other words, EPA wants people to believe that the rule’s regulatory footprint only covers carbon capture, without addressing what happens to the captured carbon.

The Agency’s distinction rings hollow. The new mandates in the NSPS rule will create regulatory burdens and litigation risks that could make carbon dioxide from power plants no longer economically viable for use in enhanced oil recovery (EOR) operations. But since EOR is currently the only way to comply with the new power plant rule,⁶ this would impede both the practical operation of the rule and erect unnecessary barriers to the use of EOR. As you know, the Committee has already raised concerns with the Agency’s premature declaration of “adequate demonstration” of CCS under the Clean Air Act; unintended burdens on EOR further complicate the analysis.

In order to operate as intended, the proposed NSPS rule demands that carbon captured by CCS technology be made available for use in EOR. In fact, EPA notes in the proposed rule that “the cost of ‘full capture’ CCS without EOR is outside the range of costs that companies are considering for comparable generation and therefore should not be considered [a Best System of Emissions Reduction] for CO₂ emissions for coal-fired power plants.”⁷ Further, EPA recently argued before the U.S. Supreme Court that its Clean Air Act authority should “ensure that the reductions that had to take place were done in the most cost-effective manner possible.”⁸

The importance of being able to use carbon dioxide from power plants in EOR operations was confirmed at the Science Committee’s October 29, 2013, hearing on the NSPS proposal. The hearing identified a range of concerns about whether the CCS technology necessary to comply with the proposed rule is commercially ready. In response to our concerns, we were assured that the use of carbon dioxide in EOR operations would be an important part of the way that the NSPS rule would function. For example, Kurt Waltzer, of the Clean Air Task Force, stated that “wide use of carbon dioxide captured from power and industrial plants is vital to expanded use of [EOR] in the U.S. that will increase U.S. oil production and decrease dependence on foreign oil.”⁹

Furthermore, testimony in our October hearing made the point that the cost of CCS related operations will be an important part of whether the rule, and the President’s larger climate

⁴*Id.*

⁵ In fact, no one has ever successfully obtained the necessary permit to permanently store carbon dioxide under EPA’s Class VI injection wells. Consequently, Enhanced Oil Recovery (EOR) is currently the only means of satisfying the terms of the NSPS mandate.

⁶ See *supra* at n. 4.

⁷ Standards of Performance for Greenhouse Gas Emission from New Stationary Sources: Electric Utility Generating Units (Sept. 20, 2013), prepublication version at 30-31.

⁸ Transcript of US EPA, et al. v. EME Homer City Generation, L.P., et al., (U.S. Dec. 10, 2013)(No. 12-1182)(argument of Deputy Solicitor General on behalf of EPA) at 32.

⁹ *EPA Power Plant Regulations: Is the Technology Ready?*, Subcomm. On Env. Of the H. Comm. On Science, Space, and Technology, 113th Cong. (Oct. 29, 2013) (testimony of Kurt Walzer at 2).

initiatives, can operate effectively. Charles McConnell, from Rice University and a former Assistant Secretary of Energy in the Obama Administration, explained that the President's carbon-related objectives "can only be achieved through the broad global deployment of low cost, commercially viable technology for capturing and permanently and safely storing/utilizing CO₂ from all fossil energy sources."¹⁰

Indeed, the most widely cited example of a CCS development project—the Kemper County, Mississippi project—is predicated on integrating carbon capture with state-of-the-art use of the carbon for EOR purposes. When you testified before our Committee on November 14th, the only domestic project you could name was, in fact, this same project. Although there have been significant delays and cost-overruns, as with any untested technology, we believe the Kemper County project holds promise and will advance our understanding of the science and economics of CCS. However, given the prohibitions of the Energy Policy Act of 2005 (EPA Act),¹¹ this project alone cannot form the basis of adequate demonstration under the Act. Moreover, the encumbrances the NSPS rule unnecessarily places on EOR operations further calls into question whether Kemper can be the basis for such a regulation.

Given the importance EPA places on using EOR to offset the incredible costs of CCS technologies,¹² we are confounded as to why the NSPS rule includes language that would impose new regulatory burdens on EOR operators who seek to use carbon captured from power plants. Specifically, the proposal would require EOR operators to meet new reporting obligations under Subpart RR of the Greenhouse Gas (GHG) reporting rules.¹³ Although these Subpart RR reporting rules have always been voluntary, the NSPS would make them mandatory for EOR operators. With this new requirement the EPA quietly declares war on EOR.

This new Agency mandate—placed only on carbon captured to satisfy the NSPS rule for power plants—creates a variety of new regulatory costs. For example, Subpart RR reporting requires that operators draft and obtain EPA approval for monitoring, reporting, and verification (MRV) plans. Not only will such MRV plans be costly to create and administer, the process for approving these plans is likely to result in litigation that will add both costs and delays for EOR operators.

All of these burdens are being imposed on an industry unrelated to power plants and with no clear justification. As EPA noted in the 2010 final GHG rule, the reporting mandates do not directly advance public health.¹⁴ These unnecessary additional costs and delays would be avoided if EPA continued to allow EOR operators accepting power plant CO₂ to report under Subpart UU, which EPA identified in its final GHG reporting rule as the more appropriate for EOR operators.¹⁵

¹⁰ *EPA Power Plant Regulations: Is the Technology Ready?*, Subcomm. On Env. Of the H. Comm. On Science, Space, and Technology, 113th Cong. (Oct. 29, 2013) (testimony of Charles D. McConnell at 3).

¹¹ 42 U.S.C. § 15962(i). See also Letter from Chairman Lamar Smith to Administrator McCarthy, Nov. 6, 2013.

¹² Standards of Performance for Greenhouse Gas Emission from New Stationary Sources: Electric utility Generating Units (Sept. 20, 2013), prepublication version at 30-31.

¹³ *Id.* at 279.

¹⁴ Instead, the Agency claimed that the "greatest benefit of mandatory reporting... will be realized in developing future GHG policies." Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide; Final Rule, 75 Fed. Reg. 75,060 (Dec. 1, 2010) at 75,075.

¹⁵ *Id.* at 75,076.

Further, the NSPS mandates that the EPA imposes on EOR operators are not the only new regulatory burdens operators must shoulder. The NSPS rule must be placed in the context of other rules EPA is pushing through. For example, the Office of Management and Budget has completed its review of an EPA final rule that addresses whether compressed carbon dioxide should be treated as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). We understand that this rule would potentially grant conditional exclusions to particular types of carbon dioxide streams.

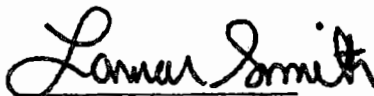
While, such a rule seems sensible, it may in fact create substantial uncertainties. For example despite their constructive and commercially important use in EOR, EPA's rule may classify these carbon dioxide streams as "solid waste." Practically speaking, that would mean exposing EOR operators to potential liability under RCRA. If the Agency merely creates a narrow carve-out for Class VI storage wells, it may fail to protect the use of carbon dioxide incidentally stored or injected for EOR purposes. The Agency must ensure that RCRA doesn't create additional obstacles to the use of anthropogenic carbon for EOR activities. The EPA cannot afford to ignore the complex consequences of its rules in real-world applications. Ultimately, the American people will bear the burden if the Agency ignores the cumulative effects of the rule-making web EPA continues to weave.

It is unacceptable that the Agency's power plant rule would create new obstacles to the very technology that the rule purports to advance. Accordingly, we look forward to your explanation regarding the justification for including the new reporting requirements in the proposed rule. We also request any analysis prepared by EPA on the costs associated with this specific provision and how those costs may affect the economic viability of the use of power plant CO₂ in EOR operations. Clearly, this rule covers the entire system of emissions reductions, and as such, EPA must address both the feasibility of new capture technologies and the unanswered concerns about storage of captured carbon.

The EPA's proposed power plant regulations will put Americans out of work and will make electricity more expensive and less reliable. It is misleading and dangerous for EPA to quietly dismiss inconvenient facts and ignore the real-world consequences of its costly regulations. Americans deserve honesty.

Thank you for your prompt attention to this matter.

Sincerely,



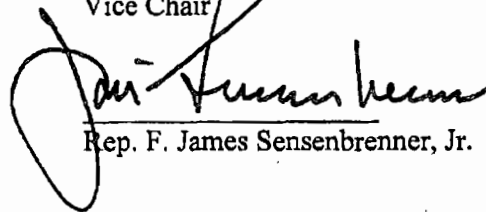
Lamar Smith
Chairman



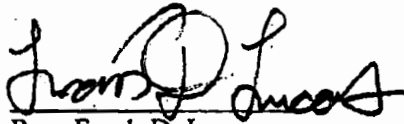
Rep. Ralph M. Hall

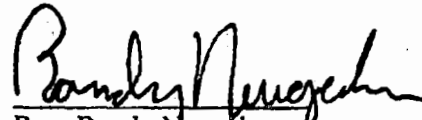


Rep. Dana Rohrabacher
Vice Chair

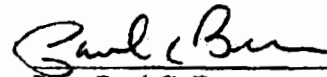


Rep. F. James Sensenbrenner, Jr.

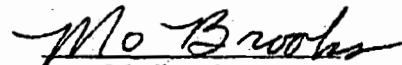

Rep. Frank D. Lucas

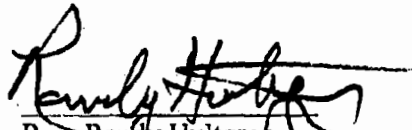

Rep. Randy Neugebauer


Rep. Michael T. McCaul

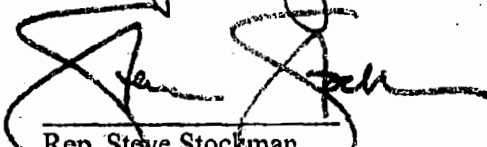

Rep. Paul C. Broun


Rep. Steven M. Palazzo


Rep. Mo Brooks

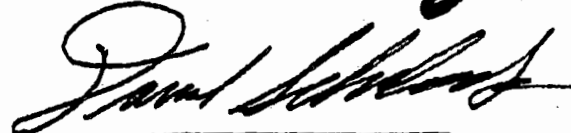

Rep. Randy Hultgren


Rep. Larry Bucshon

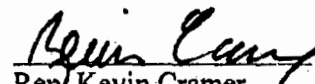

Rep. Steve Stockman

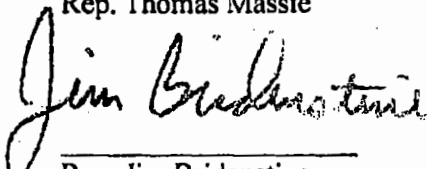

Rep. Bill Posey

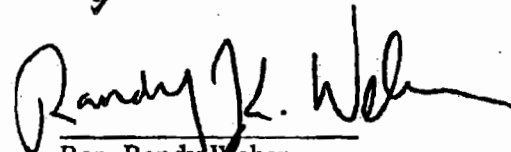

Rep. Cynthia Lummis


Rep. David Schweikert


Rep. Thomas Massie


Rep. Kevin Cramer


Rep. Jim Bridenstine


Rep. Randy Weber


Rep. Chris Collins

cc: David T. Allen, Chair, Science Advisory Board.
James R. Mihelcic, Chair, Science Advisory Board Work Group on EPA Planned Actions
Rep. Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 21 2014

OFFICE OF
AIR AND RADIATION

The Honorable Michael T. McCaul
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman McCaul:

Thank you for your letter dated December 19, 2013, to U.S. Environmental Protection Agency Administrator Gina McCarthy about the EPA's proposed New Source Performance Standards for power plants, and issues raised by our independent science advisors about whether additional review of the science behind the proposal was needed. In addition, your letter discusses the extent to which the proposed standards may impose additional requirements on enhanced oil recovery operations. The EPA refers to the proposed standards as the Carbon Pollution Standards. The Administrator has asked that I respond on her behalf.

As you know, the Carbon Pollution Standards, which are proposed under Section 111(b) of the Clean Air Act, are based on an evaluation of the technology that is available to limit carbon pollution emissions at new power plants. The EPA proposed numeric standards for carbon pollution at new power plants by following a well-established process to determine the "best system of emission reduction ... adequately demonstrated" to limit pollution.

When the Science Advisory Board (SAB) and its workgroups raise questions, the EPA takes them seriously. We use the SAB's routine, transparent, and well-established processes to better understand the nature of the questions and how we can address them. An SAB workgroup asked for information on the potential adverse impacts of carbon capture and sequestration (CCS) in November 2013 and how that issue is addressed in the proposed Carbon Pollution Standards. The SAB workgroup also asked about the adequacy of peer review of U.S. Department of Energy (DOE) National Energy Technology Laboratory (NETL) studies, which the EPA relied on to develop cost estimates for carbon capture technology in the proposed rule. The SAB's transparent, deliberative process provided an opportunity for us to engage in a dialogue to better understand the workgroup's concerns and to provide a clearer explanation of the scope of the proposed rule. The EPA clarified that we are not proposing to set any new requirements related to sequestration in this rule and thus, this rule does not include any new analysis related to such requirements. The EPA also provided some additional information on the basis of the DOE NETL cost studies that the EPA used in developing the proposed rule and the peer review process followed by DOE NETL for that study. The DOE's robust process included outside input from knowledgeable stakeholders including industry, academia and government experts in the design of the study and a peer review of the final report by a wide range of similar experts. While the EPA did not conduct additional peer review of these studies, the different levels of multi-stakeholder technical input and final review meet the requirements to support the analyses as defined by the EPA Peer Review Handbook.

After consideration of the clarifying information and thorough discussion about the issues during several meetings of the SAB that were open to the public, the workgroup recommended to the full SAB that additional review of the science of sequestration was not necessary in the proposed Carbon Pollution Standards. The full SAB agreed with the workgroup's assessment that the EPA did not propose to set any new requirements for sequestration in the Carbon Pollution Standards and that peer review of the DOE cost studies was sufficient. In a memo dated January 29, 2014, the SAB informed the EPA that it will not undertake further review of the science supporting this action. A copy of the memo is attached for your reference.

While the EPA has confidence that geologic sequestration is technically feasible and available, we recognize the need to continue to advance the understanding of various aspects of the technology. The EPA will continue to work with other agencies, researchers, and industry to ensure that our regulations are based on the best available science. The EPA plans to provide a briefing on these activities and periodically update the SAB on the status of its geologic sequestration regulations, ongoing permitting, and collaboration with DOE and other agencies.

Your letter also expresses concerns that, in your view, the proposed standards put additional requirements on enhanced oil recovery (EOR) operations. The proposed standards do not change what is expected of EOR facilities nor do they change any regulatory requirements for the industry. The proposed Carbon Pollution Standards rely on the existing EPA requirements that are already in place for monitoring and permitting CO₂ injection and geologic sequestration. Under the proposed Carbon Pollution Standards, if a new power plant decides to use CCS to comply with the standard, captured CO₂ must be sent to a facility that meets the existing regulatory requirements for monitoring and reporting geologic sequestration. The EPA has an existing permitting framework in place under the Safe Drinking Water Act governing these kinds of projects and has been working closely with states and some facilities in the permitting process. Pilot projects have been permitted under the existing regulatory framework, providing valuable experience and technical information to the EPA and states.

In order to be recognized as conducting geologic sequestration under the existing requirements (Subpart RR of the Greenhouse Gas Reporting Program), all facilities, including EOR, must conduct monitoring and reporting to show that the CO₂ remains underground. For CO₂ that is not recognized as being sequestered, EOR facilities can continue to report under the requirements for CO₂ injection (Subpart UU of the Greenhouse Gas Reporting Program). The EPA believes that it is appropriate to rely on these same, existing requirements for the proposed new source rule, and will closely evaluate comments that we receive on this issue.

Finally, your letter references a provision in the Energy Policy Act of 2005 regarding demonstration projects that received funding under the Department of Energy's Clean Coal Power Initiative. The EPA believes the Carbon Pollution Standards proposal is legally sound and that the provisions in the Energy Policy Act of 2005 do not alter it. In the proposal, the EPA determined that the best system of emission reduction (BSER) for new fossil fuel-fired boilers and integrated gasification combined cycle electric utility generating units is a new efficient unit implementing partial CCS. The EPA based this determination on a review of existing projects that implement CCS, existing projects that implement various components of CCS, planned CCS projects, and scientific and engineering studies of CCS. The determination relies on a wide range of data, information and experience well beyond that generated by projects receiving financial assistance under the Energy Policy Act of 2005 and thus does not depend solely on those projects.

To provide the public with additional information on the Energy Policy Act of 2005 and the proposed standards, the EPA published a Notice of Data Availability (NODA) in the Federal Register on February 26, 2014. Through this NODA and an accompanying technical support document (TSD), the EPA clarifies and solicits comment on its proposed views as to the meaning and significance of relevant provisions of the Energy Policy Act of 2005, including how these provisions may affect the rationale for the proposed BSER determination. We have enclosed copies of the NODA and the TSD for your reference.

Coal-fired power plants are the largest contributor to U.S. greenhouse gas emissions, and climate change poses a serious threat to human health and the environment. The EPA's proposed Carbon Pollution Standards would ensure that progress toward a cleaner, safer, and more modern power sector continues through the deployment of the same types of modern technologies that power companies are already using to build the next generation of power plants.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at lewis.josh@epa.gov or (202) 564-2095.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

Enclosures



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460**

**OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD**

January 29, 2014

EPA-SAB-14-003

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Subject: Science Advisory Board (SAB) Consideration of EPA Planned Actions in the
Spring 2013 Unified (Regulatory) Agenda and their Supporting Science

Dear Administrator McCarthy:

As part of its statutory duties, the Science Advisory Board (SAB) recently concluded a series of discussions about possible review of the science supporting major EPA planned actions. The EPA Office of Policy provided notice of release of the Spring 2013 Semiannual Regulatory Agenda on July 3, 2013. Since that time, the SAB held a public meeting on December 4-5, 2013 and public teleconference on January 21, 2014 to discuss whether to review the science supporting any of the planned regulatory actions in that agenda in order to provide advice and comment on the adequacy of the science, as authorized by section (c) of the Environmental Research, Development and Demonstration Authorization Act.

The SAB appreciates the information provided by the EPA Office of Policy and the EPA program offices describing the planned actions, associated scientific questions, and agency plans for scientific analyses and peer review. The SAB also appreciates information provided by the public regarding the planned actions. The written information provided and the results of fact-finding discussions with EPA Staff are available on the SAB website.

The SAB focused its attention on 11 major actions identified by the EPA Office of Policy as being planned but not yet proposed as of the date the Semiannual Regulatory Agenda was published in the *Federal Register* on July 3, 2013. After discussions held at the public meeting on December 4-5, 2013 and the public teleconference on January 21, 2014, the SAB decided that it will not undertake review of the science supporting any actions in the semi-annual regulatory

agenda at this time. However, the SAB wishes to communicate three important points related to the review of major planned actions included in the Spring 2013 Semiannual Regulatory Agenda.

First, in regard to the planned action entitled *Revision of 40 CFR Part 192 -- Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings and Uranium In Situ Leaching Processing Facilities* (2060-AP43), the SAB wishes to evaluate the science supporting the proposed rule after it is proposed, when more information about the proposed rule and the science supporting it are made available. At that time the SAB will determine whether it wishes to offer advice and comment to the Administrator. The SAB made this decision because there was insufficient information provided by the agency to date about the scientific and technical basis for this planned action.

Second, in regard to the action entitled *Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generation Units* (2060-AQ91), the SAB defers to EPA's legal view, communicated to the SAB by staff from EPA's Office of Air and Radiation, that the portion of the rulemaking addressing coal-fired power plants focuses on carbon capture and that the regulatory mechanisms for addressing potential risks associated with carbon sequestration are not within the scope of the Clean Air Act. Carbon sequestration, however, is a complex process, particularly at the scale required under this rulemaking, which may have unintended multi-media consequences. The Board's strong view is that a regulatory framework for commercial-scale carbon sequestration that ensures the protection of human health and the environment is linked in important systematic ways to this rulemaking. Research and information from the EPA, Department of Energy, and other sources related to carbon sequestration merit scientific review by the National Research Council or the SAB. Indeed, the Board notes that Section 704 of the Energy Independence and Security Act of 2007 directly calls for the National Research Council to review such research conducted by the Department of Energy and that this review has not yet occurred. The SAB asks the EPA to explore options for conducting such a review in a timely manner. The Board also advises the agency to monitor technological progress on carbon capture as the regulation is implemented.

Third, and more generally, the SAB is seeking ways to improve the process for future review of the semi-annual regulatory agenda. The Board requests that the EPA describe in a more complete and consistent manner the scientific and technological bases for major planned actions and associated peer review. More complete and timely agency information when the Board begins considering the regulatory agenda will enable the SAB to make informed decisions in an expeditious manner about whether to provide advice and comment on science supporting planned agency actions. The SAB Staff Office will be meeting soon with EPA program offices to discuss improved processes to provide the SAB with the information needed for the Board's deliberations.

On behalf of the SAB, I thank you for the opportunity to support EPA through consideration of the science supporting actions in the agency's regulatory agenda.

Sincerely,

//s//

Dr. David T. Allen, Chair
Science Advisory Board

Enclosure

(1) Roster of SAB Members

**U.S. Environmental Protection Agency
Science Advisory Board**

CHAIR

Dr. David T. Allen, Gertz Regents Professor of Chemical Engineering and the Director of the Center for Energy and Environmental Resources, The University of Texas, Austin, TX

MEMBERS

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Dr. Joseph Arvai, Svare Chair in Applied Decision Research, Department of Geography, University of Calgary, Calgary, Alberta, Canada

Dr. Thomas Burbacher, Professor, Department of Environmental and Occupational Health Sciences, School of Public Health, University of Washington, Seattle, WA

Dr. Ingrid Burke, Director and Wyoming Excellence Chair, Haub School and Ruckelshaus Institute of Environment and Natural Resources, University of Wyoming, Laramie, WY

Dr. Edward T. Carney, Departmental Senior Science Leader and Director of Predictive Toxicology Center, Toxicology & Environmental Research and Consulting, The Dow Chemical Company, Midland, MI

Dr. Peter Chapman, Principal and Senior Environmental Scientist, Golder Associates Ltd, Vancouver, BC, Canada

Dr. Terry Daniel, Professor of Psychology and Natural Resources, Department of Psychology, School of Natural Resources, University of Arizona, Tucson, AZ

Dr. George Daston, Victor Mills Society Research Fellow, Global Product Stewardship, The Procter & Gamble Company, Mason, OH

Dr. Costel Denson, Managing Member, Costech Technologies, LLC, Newark, DE

Dr. Otto C. Doering III, Professor, Department of Agricultural Economics, Purdue University, W. Lafayette, IN

Dr. Michael Dourson, President, Toxicology Excellence for Risk Assessment, Cincinnati, OH

Dr. Joel Ducoste, Professor, Department of Civil, Construction, and Environmental Engineering, College of Engineering, North Carolina State University, Raleigh, NC

Dr. David A. Dzombak, Walter J. Blenko, Sr. University Professor of Environmental Engineering, Department of Civil and Environmental Engineering, College of Engineering, Carnegie Mellon University, Pittsburgh, PA

Dr. T. Taylor Eighmy, Vice Chancellor for Research and Engagement, Office of Research, University of Tennessee, Knoxville, TN

Dr. Elaine M. Faustman, Professor and Director, Environmental and Occupational Health Sciences, University of Washington, Seattle, WA

Dr. R. William Field, Professor, Department of Occupational and Environmental Health, and Department of Epidemiology, College of Public Health, University of Iowa, Iowa City, IA

Dr. H. Christopher Frey, Distinguished University Professor, Department of Civil, Construction and Environmental Engineering, College of Engineering, North Carolina State University, Raleigh, NC

Dr. John P. Giesy, Professor and Canada Research Chair, Veterinary Biomedical Sciences and Toxicology Centre, University of Saskatchewan, Saskatoon, Saskatchewan, Canada

Dr. Steven Hamburg, Chief Scientist, Environmental Defense Fund, Boston, MA

Dr. Cynthia M. Harris, Director and Professor, Institute of Public Health, Florida A&M University, Tallahassee, FL

Dr. Robert J. Johnston, Director of the George Perkins Marsh Institute and Professor, Economics, Clark University, Worcester, MA

Dr. Kimberly L. Jones, Professor and Chair, Department of Civil Engineering, Howard University, Washington, DC

Dr. Catherine Karr, Associate Professor - Pediatrics and Environmental and Occupational Health Sciences and Director - NW Pediatric Environmental Health Specialty Unit, University of Washington, Seattle, WA

Dr. Madhu Khanna, Professor, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, Urbana, IL

Dr. Nancy K. Kim, Senior Executive, Health Research, Inc., Albany, NY

Dr. Francine Laden, Mark and Catherine Winkler Associate Professor of Environmental Epidemiology, Harvard School of Public Health, and Channing Division of Network Medicine, Brigham and Women's Hospital and Harvard Medical School, Boston, MA

Dr. Lois Lehman-McKeeman, Distinguished Research Fellow, Discovery Toxicology, Bristol-Myers Squibb, Princeton, NJ

Dr. Cecil Lue-Hing, President, Cecil Lue-Hing & Assoc. Inc., Burr Ridge, IL

Dr. Elizabeth Matsui, Associate Professor, Pediatrics, School of Medicine, Johns Hopkins University, Baltimore, MD

Dr. Kristina D. Mena, Associate Professor, Epidemiology, Human Genetics, and Environmental Sciences, School of Public Health, University of Texas Health Science Center at Houston, El Paso, TX

Dr. Surabi Menon, Director of Research, ClimateWorks Foundation, San Francisco, CA

Dr. James R. Mihelcic, Professor, Civil and Environmental Engineering, University of South Florida, Tampa, FL

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Dr. H. Keith Moo-Young, Chancellor, Office of Chancellor, Washington State University, Tri-Cities, Richland, WA

Dr. Eileen Murphy, Director of Research and Grants, Ernest Mario School of Pharmacy, Rutgers University, Piscataway, NJ

Dr. James Opaluch, Professor and Chair, Department of Environmental and Natural Resource Economics, College of the Environment and Life Sciences, University of Rhode Island, Kingston, RI

Dr. Duncan Patten, Director, Montana Water Center, and Research Professor, Hydroecology Research Program, Department of Land Resources and Environmental Sciences, Montana State University, Bozeman, MT

Dr. Martin Philbert, Dean and Professor, Environmental Health Sciences, School of Public Health, University of Michigan, Ann Arbor, MI

Mr. Richard L. Poirot, Air Quality Planning Chief, Air Quality and Climate Division, Vermont Department of Environmental Conservation, Montpelier, VT

Dr. Stephen Polasky, Fesler-Lampert Professor of Ecological/Environmental Economics, Department of Applied Economics, University of Minnesota, St. Paul, MN

Dr. Amanda Rodewald, Director of Conservation Science, Cornell Lab of Ornithology and Associate Professor, Department of Natural Resources, Department of Natural Resources, Cornell University, Ithaca, NY

Dr. James Sanders, Executive Director, Skidaway Institute of Oceanography, University of Georgia, Savannah, GA

Dr. William Schlesinger, President, Cary Institute of Ecosystem Studies, Millbrook, NY

Dr. Gina Solomon, Deputy Secretary for Science and Health, Office of the Secretary, California Environmental Protection Agency, Sacramento, CA

Dr. Daniel O. Stram, Professor, Department of Preventive Medicine, Division of Biostatistics, University of Southern California, Los Angeles, CA

Dr. Peter S. Thorne, Director, Environmental Health Sciences Research Center and Professor and Head, Department of Occupational and Environmental Health, College of Public Health, University of Iowa, Iowa City, IA

Dr. Paige Tolbert, Professor and Chair, Department of Environmental Health, Rollins School of Public Health, Emory University, Atlanta, GA

Dr. Jeanne VanBriesen, Professor, Department of Civil and Environmental Engineering, Carnegie Mellon University, Pittsburgh, PA

Dr. John Vena, University of Georgia Foundation Professor in Public Health and Head, Department of Epidemiology and Biostatistics, Georgia Cancer Coalition Distinguished Scholar, College of Public Health, University of Georgia, Athens, GA

Dr. Peter J. Wilcoxon, Associate Professor, Economics and Public Administration, The Maxwell School, Syracuse University, Syracuse, NY

SCIENCE ADVISORY BOARD STAFF

Dr. Angela Nugent, Designated Federal Officer, U.S. Environmental Protection Agency, Washington, DC,

AK-11-001-0182

Congress of the United States
Washington, DC 20515

June 13, 2011

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington D.C., 20460

Dear Administrator Jackson:

For almost two decades, the EPA has required permit applicants to conduct whole effluent toxicity (WET) tests and has required that permits issued in accordance with the National Pollutant Discharge Elimination System (NPDES) comply with Title 40 Code of Federal Regulations Part 122.44(d) with respect to WET. There has been no change in this regulation. However, EPA Region 6 has recently made significant changes in its requirements with respect to how the WET program is implemented pursuant to this regulation. The changes are a requirement to include a sublethal WET permit limit based on the results of sublethal WET tests and a requirement to do studies to identify the cause of failures and corrective programs when only sublethal effects are present.

While we understand, and share, EPA's goal of protecting our waterways from instream toxicity caused by pollutant discharges, we are concerned that the costs and regulatory burden of implementing EPA's policy with regard to sublethal WET test failures is not justified given the apparent lack of environmental benefits based on the following:

- Implementing this policy could cost Texas communities in excess of \$20 million per year.
- EPA's own studies indicate that there is no demonstrated correlation between sublethal WET testing in the laboratory and actual instream impacts.
- Toxicity investigations attempting to identify the causes of test failures when only sublethal effects are present can cost hundreds of thousands to millions of dollars, and to the limited extent that such studies have been attempted, they have typically been unsuccessful in identifying, and eliminating the causes of sublethal WET test failures.
- Sublethal WET permit limits subject a permit applicant to potential enforcement by state agencies, EPA and to third-party citizen suit liability for test failures that may simply be the result of the statistical error rate of the test.

Given that the regulatory burden imposed in meeting a sublethal WET limit can be substantial, we urge you to revisit this EPA policy and work with representatives of the regulated community and the Texas Commission on Environmental Quality to refine the policy in a manner that meets the requirements of the federal Clean Water Act but provides more flexibility to the State and takes into consideration the environmental significance and the technical challenges posed by sublethal WET permit limits.

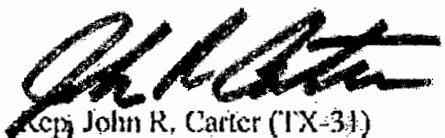
Possible approaches include the following:

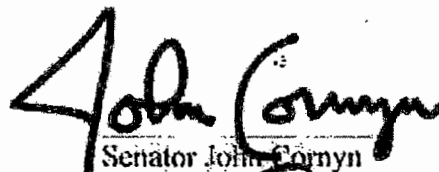
- Suspend the imposition of sublethal WET limits until additional studies are conducted that clearly demonstrate a correlation between sublethal test results and instream sublethal toxicity.
- Only impose a sublethal WET limit after a permit applicant has conducted a successful study to identify the cause of, and corrective measures to eliminate, test failures.

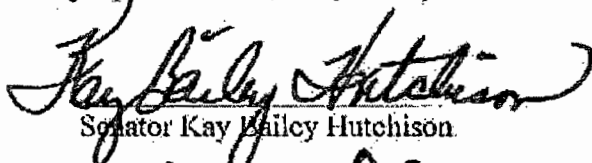
It is our understanding that TCEQ is supportive of alternatives such as these. In addition, there may be other approaches that reflect the unique challenges of sublethal WET testing while providing adequate protection against instream sublethal toxicity.

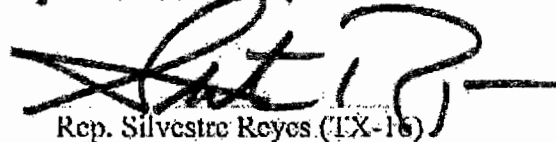
We see this not as a request to lessen the regulatory commitment to clean water, but rather an opportunity to refocus our public entities' limited resources in a manner that will most effectively protect water quality. In this challenging economic time of budget cuts and identification of cost-saving opportunities, we seek your help in ensuring that tax-payer and rate-payer funded scientific investigations and capital investments go to measures that clearly result in water quality protection and enhancement.

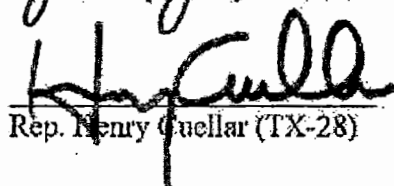
Thank you for your attention to this matter.


Rep. John R. Carter (TX-34)


Senator John Cornyn

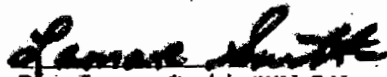

Senator Kay Bailey Hutchison



Rep. Silvestre Reyes (TX-16)


Rep. Henry Cuellar (TX-28)


Rep. Mike Conaway (TX-11)


Rep. Louie Gohmert (TX-01)



Rep. Lamar Smith (TX-21)


Rep. Pete Sessions (TX-32)


Rep. Sam Johnson (TX-03)


Rep. Randy Neugebauer (TX-19)


Rep. Ted Poe (TX-02)

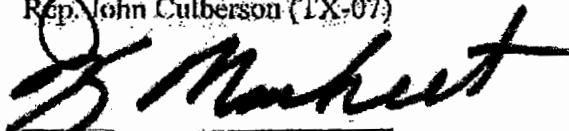

Rep. Michael T. McCaul (TX-10)


Rep. Ray Granger (TX-12)

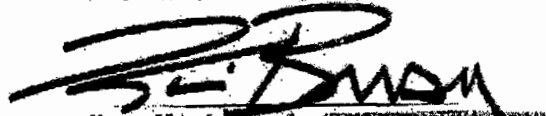

Rep. Blake Farenthold (TX-27)


Rep. Bill Flores (TX-17)


Rep. John Culberson (TX-07)

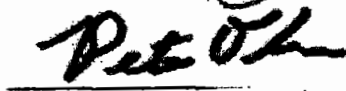

Rep. Kenny Marchant (TX-24)

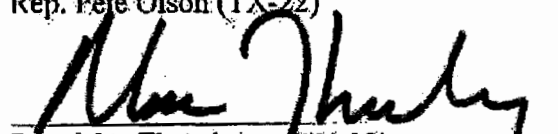

Rep. Ralph M. Hall (TX-04)

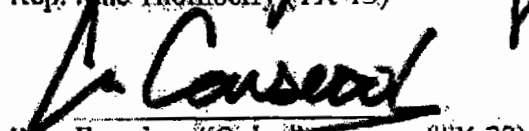

Rep. Kevin Brady (TX-08)


Rep. Joe Barton (TX-06)


Rep. Jeb Hensarling (TX-05)


Rep. Pete Olson (TX-22)


Rep. Mac Thornberry (TX-13)


Rep. Francisco "Quico" Canseco (TX-23)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

JUL 13 2011

The Honorable Michael T. McCaul
House of Representatives
Washington, D.C. 20515

Dear Congressman McCaul:

Thank you for your letter dated May 6, 2011, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding sublethal whole effluent toxicity (WET) limits and requirements in wastewater permits issued under the National Pollutant Discharge Elimination System (NPDES) program of the federal Clean Water Act (CWA). Your letter was forwarded to me for response because Texas is within the jurisdiction of Region 6.

We appreciate your interest in this issue and we welcome the opportunity to address the concerns you have raised. For more than six years, the EPA has been meeting with, and providing training to, representatives of the Texas Commission on Environmental Quality (TCEQ), Texas municipalities, industries and environmental groups on the issue of WET permit limits based on chronic sublethal toxicity effects to aquatic organisms. Unfortunately, the TCEQ had not satisfactorily implemented this portion of the CWA, and the result had been excess pollution into Texas waterways.

Your letter suggests that implementing sublethal WET requirements could cost Texas communities in excess of \$20 million per year. The EPA cannot verify the validity of the cost estimate, but we can share with you that across the nation, over 40 states and one territory have successfully incorporated sublethal WET limits into their programs, including states with large industrial economies, including California, Florida, and North Carolina. Through our experience, we have found that typical implementation costs are substantially lower than the figure in your letter suggests.

Your letter indicates that you have "significant concerns that the regulatory burden imposed by sublethal WET limits based on sublethal test results will do little more than expose permittees to significant expenses and liability without any related enhancement to water quality protection." The EPA acknowledges your concern about the "regulatory burden" of sublethal WET limits, but notes that such limits are mandated by the CWA and the EPA's implementing regulations in order to meet Texas water quality standards. The CWA section 301(b)(1)(C) requires that permits include "any more stringent limitation... necessary to meet water quality standards." *See also* 40 C.F.R. 122.44(d)(1) (same). Texas water quality standards, in turn, contain narrative criteria that specifically require protection against sublethal toxicity.¹⁹ Accordingly, where a discharger has the reasonable potential to cause or contribute to

¹⁹ The following information is from the currently applicable Texas water quality standards. The Texas water quality standards provide protection against chronic total toxicity, which is defined in the standards to include both lethal and sublethal effects. Specifically, the standards provide that "[c]hronic total toxicity, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude chronic toxicity in all water in the state with an existing or designated aquatic life use" 30 Texas Administrative Code (TAC) 307.6(e)(1) (2010). *See also* TAC 307.6(b)(2) (2000) ("Water in the state with designated or existing aquatic life uses shall not be chronically toxic to aquatic life..."). The standards specifically define chronic toxicity as: "sub-lethal effects, such as growth impairment and reduced reproductive success, but it may also produce lethality." 30 TAC 307.3(a)(11) (2010).

an instream excursion above this narrative criterion, permits must include limits as stringent as necessary to protect against sublethal toxicity, as required by state standards.

Second, your letter asserts that "EPA's own studies indicate that there is no demonstrated correlation between sublethal WET testing in the laboratory and actual instream impacts." This argument – that there is no reliable correlation between sublethal WET testing and instream toxicity – has been specifically addressed and rejected by the D.C. Circuit Court of Appeals. See *Edison Electric Inst. v. EPA*, 391 F.3d 1267 (D.C. Cir. 2004). In that case, industry petitioners had made similar arguments regarding the lack of correlation between laboratory toxicity and instream impacts, particularly at lower levels of toxicity, but the D.C. Circuit Court found that the EPA had successfully demonstrated such correlation with regard to chronic toxicity. Specifically, the *Edison Electric Inst.* court upheld the WET test methods in full, holding that "[b]efore implementing a test method, the EPA must establish that the measured characteristic bears a rational relationship to real-world conditions; the available studies reasonably support such a conclusion with regard to chronic toxicity." *Edison Electric Inst.* at 1274. We are confident in the scientific basis of improving water quality through implementing effluent toxicity testing and limits.

Third, your letter indicates that "[t]oxicity investigations attempting to identify the causes of test failures when only sublethal effects are present are costly and have typically been unsuccessful in identifying and eliminating the causes of sublethal WET test failures." The EPA disagrees with this statement and is aware of multiple successful sublethal-only toxicity studies conducted in Region 6 within the last two years. Those studies, completed by laboratories in Region 6 for Texas permittees, successfully identified the sources of sublethal toxicity. Many of the EPA WET methods are being used by industrial and municipal permittees nationally to successfully identify and eliminate the causes of chronic sublethal WET test failures.² Many states have been effectively implementing sublethal toxicity study requirements and limits, and reducing the toxic effects of undifferentiated waste streams on receiving waters. The low – and declining – rate of noncompliance with those toxicity limits indicates that the cause of lethal and sublethal toxicity can in fact be identified and controlled. This program has developed a national track record for identifying and then reducing the toxicity of discharges into the waters of the U.S.

Finally, your letter indicates that "[s]ublethal WET permit limits subject a permittee to potential enforcement action for test failures that may simply be the result of the statistical error rate of the test." The EPA respectfully disagrees that sublethal WET test failures would simply be the result of statistical error. As discussed above, the D.C. Circuit Court specifically upheld the EPA's WET test methods for sublethal toxicity, finding that the EPA had successfully demonstrated the correlation between laboratory toxicity and instream impacts. See *Edison Electric Institute, et al. v. EPA*, 391 F.3d 1267 (D.C. Cir. 2004). In supporting this conclusion, the court pointed to the EPA's *Technical Support Document for Water Quality Based Toxics Control* (March 1991), which had found that the likelihood that the data may be explained by randomness, rather than actual correlation, to be only 0.1 percent. In other words, there is a strong likelihood that data indicating laboratory toxicity is correlated to instream impacts and cannot be explained away by statistical error. Furthermore, the EPA does not recommend initial response to a single exceedance of a WET limit, causing no known harm, be a formal enforcement action with a civil penalty. See *National Policy Regarding Whole Effluent Toxicity Enforcement*, Memorandum from Robert Van Heuvelen (Director, Office of Regulatory Enforcement, EPA) and Michael Cook (Office of Wastewater Management, EPA) (August 14, 1995). In addition, the U.S. Supreme Court has found that citizens cannot bring suit against permittees on the basis of a single past violation of a permit limit, where such violation is not part of continuous or intermittent violations reasonably likely to occur in the future. See *Gwaltney*

² *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I, Marine Toxicity Identification (TIE) Guidance Document, Phase I, and Methods for Aquatic Toxicity Identification Evaluations: Phase I Toxicity Characterization Procedures, Second Edition*

of *Smithfield v. Chesapeake Bay Foundation*, 484 U.S. 49 (1987). Any violation of a WET limit is of concern and should receive immediate, professional review. However, a single violation does not necessarily require that a formal enforcement action be taken. The enforcement authority has discretion on selecting an appropriate response.

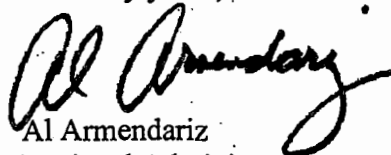
As an alternative to including sublethal WET limits in permits, you suggest suspending the imposition of sublethal WET limits until additional studies are conducted that demonstrate a correlation between sublethal test results and instream sublethal toxicity. These studies already exist, and, as discussed above, the D.C. Circuit Court in the *Edison Electric* case has found that the EPA has already demonstrated this correlation. One such study includes Mr. James D. Horne's paper titled *Sublethal Toxicity Identification – Texas Case Studies* (Presented at the Society of Environmental Toxicology and Chemistry [SETAC] 31st Annual Meeting in North America 2010, abstract available at Horne, James D. *Sublethal Toxicity Identification – Texas Case Studies* [Abst RP104], Abstract book SETAC North America 31st Annual Meeting, held at the Oregon Convention Center, Portland, Oregon, USA., 07 - 11 November 2010, page 404).

Another alternative you suggest is to impose a sublethal WET limit only after a permittee has conducted a successful Toxicity Reduction Evaluation. However, this would not be consistent with the regulation at 40 CFR 122.44(d)(1)(v), which requires that where a discharge has the reasonable potential to cause or contribute to an instream excursion above a narrative criterion within the applicable state water quality standards, "the permit must contain *effluent limits* for whole effluent toxicity" (emphasis added).

Clean water is the most essential component of healthy Texas ecosystems, wildlife, and the state's economy. The EPA is committed to working constructively with the TCEQ and permit holders to implement all CWA requirements as quickly as possible, and when necessary, to provide technical assistance or funding through federal programs. However, neither inaction nor additional delay – on top of the six years already committed by the agency to resolve WET issues with the state – are viable solutions. The EPA's approach has been successfully implemented by states all over the country, is grounded in sound science, and has been upheld by the federal courts. Fishermen, hunters, and all Texans deserve the agency's and the state's focused attention on bringing this matter to closure.

If you have any further questions, please contact me at (214) 665-2100, or your staff may contact Ms. Cynthia Fanning at (214) 665-2142.

Sincerely yours,


Al Armendariz
Regional Administrator

Identical letters sent to:
Please see page 4

The Honorable John Cornyn
United States Senate

The Honorable John R. Carter
United States House of Representatives

The Honorable Silvestre Reyes
United States House of Representatives

The Honorable Henry Cuellar
United States House of Representatives

The Honorable Mike Conaway
United States House of Representatives

The Honorable Louie Gohmert
United States House of Representatives

The Honorable John Culberson
United States House of Representatives

The Honorable Lamar Smith
United States House of Representatives

The Honorable Kenny Marchant
United States House of Representatives

The Honorable Pete Sessions
United States House of Representatives

The Honorable Ralph M. Hall
United States House of Representatives

The Honorable Kevin Brady
United States House of Representatives

The Honorable Kay Bailey Hutchison
United States Senate

The Honorable Joe Barton
United States House of Representatives

The Honorable Ted Poe
United States House of Representatives

The Honorable Jeb Hensarling
United States House of Representatives

The Honorable Randy Neugebauer
United States House of Representatives

The Honorable Pete Olson
United States House of Representatives

The Honorable Kay Granger
United States House of Representatives

The Honorable Mac Thornberry
United States House of Representatives

The Honorable Blake Farenthold
United States House of Representatives

The Honorable Fransisco "Quico" Canseco
United States House of Representatives

The Honorable Bill Flores
United States House of Representatives

The Honorable Sam Johnson
United States House of Representatives



AL-14-000-1911

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 2 2013

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Michael McCaul
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to inform you of the availability of the draft of the U.S. Environmental Protection Agency's (EPA) *FY 2014-2018 Strategic Plan*, which supports the four-year update required by the Government Performance and Results Act (GPRA) Modernization Act of 2010 (Public Law 11-352). The agency's *Strategic Plan* identifies measurable environmental and human health outcomes the agency expects to achieve over the next four years. This draft plan updates the previous plan by making targeted revisions that seek to strengthen the agency's partnerships, and convey how the EPA will do business more effectively and efficiently to advance environmental and human health protection.

We are making the draft plan available in accordance with the requirements of the GPRA Modernization Act. Pursuant to the requirements of that Act, the draft plan is additionally being made available for public comment through January 3, 2014.

We will consider feedback we receive during the comment process as we prepare the final *FY 2014-2018 EPA Strategic Plan* for anticipated release in February/March 2014. For your convenience, the draft of the plan is accessible through <http://www2.epa.gov/planandbudget/strategicplan>.

If you have any questions or concerns or wish to obtain a hard copy of the draft plan, please contact me or have your staff contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at levine.carolyn@epa.gov or (202) 564-1859.

Sincerely,

A handwritten signature in cursive script that reads "Maryann Froehlich".

Maryann Froehlich
Acting Chief Financial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 31 2017

OFFICE OF
CIVIL RIGHTS

The Honorable Michael McCaul
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to submit the enclosed copy of the U.S. Environmental Protection Agency's Fiscal Year 2016 annual report prepared in accordance with Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

This report provides information regarding the number of cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged; the amount of money required to be reimbursed by the EPA to the Judgment Fund in connection with such cases; the number of employees disciplined for discrimination, retaliation, harassment or any other infractions of any provision of law referred to under the No FEAR Act; an analysis of trends and knowledge gained; and accomplishments.

An identical letter has been sent to each entity designated to receive this report as listed in Section 203 of the No FEAR Act. The U.S. Attorney General, the Chair of the U.S. Equal Employment Opportunity Commission, and the Director of the U.S. Office of Personnel Management will also be sent a copy of the report.

If you have any questions, please contact me, or your staff may contact Thea J. Williams in EPA's Office of Congressional and Intergovernmental Relations at williams.thea@epa.gov or (202) 564-2064.

Sincerely,



Tanya A. Lawrence
Acting Director

Enclosure

MICHAEL C. BURGESS, M.D.
26TH DISTRICT, TEXAS

WASHINGTON OFFICE:
1721 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-7772

DISTRICT OFFICE:
1660 SOUTH STEMMONS STREET
SUITE 230
LEWISVILLE, TX 75067
(972) 434-9700
www.house.gov/burgess

AL-08-000-8144

Congress of the United States
House of Representatives
Washington, DC 20515-4326

COMMITTEES:
**TRANSPORTATION AND
INFRASTRUCTURE**
SUBCOMMITTEES:
HIGHWAYS, TRANSIT, AND PIPELINES
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS,
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SUBCOMMITTEES:
SPACE AND AERONAUTICS
ENVIRONMENT, TECHNOLOGY, AND STANDARDS

**HOUSE REPUBLICAN
POLICY COMMITTEE**

June 11, 2008


The Honorable Stephen Johnson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Johnson:

Please accept the attached letter signed by 24 Members of the United States House of Representatives representing the people of the state of Texas.

Please include this letter in the appropriate administrative record.

Sincerely,


Michael C. Burgess, M.D.
Member of Congress

Congress of the United States
Washington, DC 20515

June 11, 2008

The Honorable Stephen Johnson
Administrator
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dear Administrator Johnson:

We are writing to comment on the State of Texas' petition to reduce the volume of the renewable fuel standard (RFS) mandate required to be used in motor vehicles and other engines. Governor Perry's request to reduce the mandate, citing adverse economic impact in Texas, is consistent with Section 211 (o) of the Clean Air Act as amended by the Energy Independence and Security Act of 2007 (EISA).

Under the EISA, the RFS was expanded to require the blending of 36 billion gallons of renewable fuel in the nation's fuel supply by 2022. While we strongly support alternative sources of energy to diversify America's energy supplies, we remain deeply concerned with recent economic studies and news reports that highlight the unintended consequences that certain biofuels may have on global food prices, our environment, and the economy of our state.

In the span of a year, working families have had to tighten their budgets as the price of a dozen eggs rose by 35%, a gallon of milk by 23%, and a loaf of bread by 16%. Livestock producers and family ranches have endured increasing prices for a bushel of corn for feed, which can negatively impact segments of the agricultural industry. These increased costs are falling on the economy at the same time that skyrocketing energy prices are taking a toll on our constituent's pocketbooks.

While we recognize there are several factors contributing to rising food and feed prices, we are concerned with any additional potential impacts certain biofuels may have on consumers and our economy as the RFS mandate increases in the years ahead. Our nation must do more to advance alternative energy sources, like cellulosic ethanol and advanced biofuels from non-food feedstocks, that offer real solutions to the "food versus fuel" debate.

As you know, Section 211 (o) of the Clean Air Act enables the EPA to grant a full or partial waiver if implementation of the RFS would severely harm the economy or environment of a state, region, or the entire country.

We respectfully request EPA to conduct a thorough and complete investigation into Governor Perry's request, with consideration of the economic effect that the expansion of the renewable fuels standard may have upon the state of Texas. We also support the development of alternatives like cellulosic and advanced biofuels to meet the RFS requirements that do not contribute to rising food costs or economic harm concerns.

Sincerely,

Jeffrey W. Barton Joe Lee

Kyle Hanger H. Scott McCall John Culberson

Don Paul Sam Johnson T. McKittrick

Pete Sessions Isomac P. Ortiz Lamar Smith

John L. ... Kyle Hanger Ron L. ...

Al Green _____ John L. ...

Paula Fackler Mar Thurgood Red Simpson

Randy Neugebauer Ralph H. Hall Rubén Hinojosa

Cc:

The Honorable Michael C. Burgess, M.D.

The Honorable Joe Barton

The Honorable Gene Green

The Honorable Kay Granger

The Honorable Michael T. McCaul

The Honorable John Abney Culberson

The Honorable Ron Paul

The Honorable Sam Johnson

The Honorable Kenny Marchant

The Honorable Pete Sessions

The Honorable Soloman P. Ortiz

The Honorable Lamar Smith

The Honorable John Carter

The Honorable Michael K. Conaway

The Honorable Mac Thornberry

The Honorable Louie Gohmert

The Honorable Al Green

The Honorable Charles A. Gonzalez

The Honorable Jeb Hensarling

The Honorable Sheila Jackson-Lee

The Honorable Nick Lampson

The Honorable Randy Neugebauer

The Honorable Ralph M. Hall

The Honorable Ruben Hinojosa



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 11 2008

The Honorable Michael T. McCaul
U.S. House of Representatives
Washington, D.C. 20515

OFFICE OF
AIR AND RADIATION

Dear Congressman McCaul:

Thank you for your letter of June 11, 2008, co-signed by 23 of your colleagues, to Stephen L. Johnson, Administrator of the U.S. Environmental Protection Agency (EPA). Your letter requests that EPA conduct a thorough and complete investigation of the request by Governor Perry to waive a portion of the renewable fuels standard (RFS), with consideration of the economic effects on the State of Texas. Let me assure you that EPA is conducting such a review, utilizing the public notice and comment process required by the Energy Independence and Security Act of 2007 (EISA).

EPA received the Governor's waiver request, related to the current RFS requirements, on April 25, 2008. A copy of the *Federal Register* notice announcing receipt of the waiver request and soliciting public comment is enclosed. This notice calls for comment on any matter that may be relevant to EPA action on the petition, including whether compliance with RFS is causing severe harm to the economy of Texas and to what extent, if any, a waiver approval would change demand for ethanol and affect corn and feed prices. Please be assured that we will take your concerns into consideration in this matter and will place your letter in the docket for the waiver request.

EPA's Office of Air and Radiation is also considering new and revised RFS requirements, as required by EISA. We are working expeditiously on this matter and, as with our development of the first RFS program, a key part of this effort is extensive outreach to stakeholders from industry, state and local governments, and non-governmental organizations. The issues raised in your letter will be discussed and analyzed as part of this rulemaking effort.

Again, thank you for your letter. If you have further questions please contact me or your staff may call Patricia Haman, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-2806.

Sincerely,

A handwritten signature in black ink, which appears to read "Robert J. Meyers", is written over a horizontal line.

Robert J. Meyers
Principal Deputy Assistant Administrator

Enclosure

On April 11, 2008, notice was published that the Commonwealth of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Scituate, Marshfield, Cohasset, and the tidal portions of the North and South Rivers. No comments were received on this petition.

The petition was filed pursuant to Section 312(f)(3) of Public Law 92-500, as amended by Public Laws 95-217 and 100-4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to EPA by the Commonwealth of Massachusetts

certifies that there are ten pumpout facilities located within the proposed area. A list of the facilities, with phone numbers, locations, and hours of operation is appended at the end of this determination.

Based on the examination of the petition, its supporting documentation, and information from site visits conducted by EPA New England staff, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92-500, as amended by Public Laws 95-217 and 100-4.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Name	Location	Contact info	Hours	Mean low water depth
Cohasset Harbormaster	Cohasset Harbor	(781) 383-0863	15 May-1 Nov	N/A.
		VHF 10, 16	9:00 a.m.-9:00 p.m.	Boat Service.
Cole Parkway Marina	Scituate Harbor	(781) 545-2130	15 May-15 October	6 ft.
		VHF 9	8:00 a.m.-4:00 p.m.	
Harbor Mooring Service	North and South Rivers	(781) 544-3130	15 April-1 November	N/A.
		Cell (617) 281-4365	Service provided on-call	Boat Service.
		VHF 9		
James Landing Marina	Herring River, Scituate	(781) 545-3000	1 May-15 Oct	6 ft.
			8 a.m.-4:30 p.m.	
Waterline Mooring	Scituate Harbor	(781) 545-4154	15 May-15 Oct	N/A.
		VHF 9, 16	8 a.m.-5 p.m.	Boat Service.
			Or by appointment	
Green Harbor Town Pier	Green Harbor, Marshfield ...	(781) 834-5541	1 April-15 Nov 24/7 Self- Serve 15 May-30 Sept.	4 ft.
		VHF 9, 16	Attendant Service 8 a.m.- 11:30 p.m.	
Bridgeway Marina	South River, Marshfield	(781) 837-9343	15 June-15 October	6 ft.
		VHF 9, 11	9-5 p.m.	
Erickson's Marina	South River, Marshfield	(781) 837-2687	15 March-15 November	4 ft.
			8 a.m.-5 p.m.	
White's Ferry Marina	South River, Marshfield	(781) 837-9343	15 June-15 October	4 ft.
		VHF 9, 11	9-5 p.m.	
Mary's Boat Livery	North River, Marshfield	(781) 837-2322	15 May-1 Oct	4 ft.
		VHF 9, 16	8 a.m.-4 p.m.	
** Marshfield Yacht Club	South River, Marshfield	TBA	TBA	TBA.
** South River Boat Ramp ...	South River, Marshfield	TBA	TBA	TBA.

** Pending facilities.

Dated: May 14, 2008.
Robert W. Varney,
Regional Administrator, Region 1.
[FR Doc. E8-11485 Filed 5-21-08; 8:45 a.m.]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2008-0380; FRL-8569-5]

Notice of Receipt of a Request From the State of Texas for a Waiver of a Portion of the Renewable Fuel Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 211(o)(7) of the Clean Air Act (the Act), 42 U.S.C. 7545(o)(7), EPA is issuing a

notice of receipt of a request for a waiver of 50 percent of the renewable fuel standard (RFS) "mandate for the production of ethanol derived from grain." The request has been made by the Governor of the State of Texas. Section 211(o)(7)(A) of the Act allows the Administrator of the EPA to grant the waiver if implementation of the national RFS requirements would severely harm the economy or environment of a state, a region, or the United States, or if EPA determines that there is inadequate domestic supply of renewable fuel. EPA is required by the Act to provide public notice and

opportunity for comment on this request.

DATES: *Comments.* Written comments must be received on or before June 23, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0380, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* a-and-r-docket@epa.gov.

- *Fax:* (202) 566-1741.

- *Mail:* Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2008-0380, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0380. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT:

James W. Caldwell, Office of Transportation and Air Quality, Mailcode: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9303; fax number: (202) 343-2802; e-mail address: caldwell.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

(A) How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2008-0380, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the EPA/DC Docket Center Public Reading Room, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Air and Radiation Docket is 202-566-1742.

Use <http://www.regulations.gov> to obtain a copy of the waiver request, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

(B) What Information Is EPA Particularly Interested In?

On April 25, 2008, the Governor of Texas submitted a request to the Administrator under section 211(o) of the Act for a waiver of 50 percent of the RFS "mandate for the production of ethanol derived from grain." The request includes statements regarding the economic impact of higher corn prices in Texas. This request has been placed in the public docket.

Pursuant to section 211(o)(7) of the Act, EPA specifically solicits comments and information to enable the Administrator to determine if the statutory basis for a waiver of the national RFS requirements has been met and, if so, the extent to which EPA should exercise its discretion to grant a waiver. Section 211(o)(7) of the Act allows the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to waive the requirements of the

national RFS at 40 CFR 80.1105, in whole or in part, upon petition by one or more States. A waiver may be granted if the Administrator determines, after public notice and an opportunity for public comment, that implementation of the RFS requirements would severely harm the economy or environment of a state, a region, or the United States; or that there is an inadequate domestic supply of renewable fuel. The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver within 90 days of receiving it. If a waiver is granted, it can last no longer than one year unless it is renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy. The RFS for 2008 was published in the *Federal Register* on February 14, 2008 (73 FR 8665) and was intended to lead to the use of nine (9) billion gallons of renewable fuel in 2008.

EPA requests comment on any matter that might be relevant to EPA's action on the petition, specifically including (but not limited to) information that will enable EPA to:

- (a) Evaluate whether compliance with the RFS is causing severe harm to the economy of the State of Texas;

- (b) evaluate whether the relief requested will remedy the harm;

- (c) determine to what extent, if any, a waiver approval would change demand for ethanol and affect corn or feed prices; and

- (d) determine the date on which a waiver should commence and end if it were granted.

In addition to inviting comments on the above issues, EPA recognizes that it has discretion in deciding whether to grant a waiver, as the statute provides that "[t]he Administrator * * * may waive the requirements of [section 211(o)(2)] in whole or in part" (emphasis supplied) if EPA determines that the severe harm criteria has been met. EPA also recognizes that a waiver would involve reducing the national volume requirements under section 211(o)(2), which would have effects in areas of the country other than Texas, including areas that may be positively impacted by the RFS requirements. Given this, EPA invites comment on all issues relevant to deciding whether and how to exercise its discretion under this provision, including but not limited to the impact of a waiver on other regions or parts of the economy, on the environment, on the goals of the renewable fuel program, on appropriate mechanisms to implement a waiver if a waiver were determined to be

appropriate, and any other matters considered relevant to EPA's exercise of discretion under this provision.

Commenters should include data or specific examples in support of their comments in order to aid the Administrator in determining whether to grant or deny the waiver. Data that shows a quantitative link between the use of corn for ethanol and corn prices, and on the impact of the RFS mandate on the amount of ethanol produced, would be especially helpful.

Dated: May 16, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator,
Office of Air and Radiation.

[FR Doc. E8-11486 Filed 5-21-08; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

May 19, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 23, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at Nicholas_A_Fraser@omb.eop.gov or via fax at (202) 395-5167 and to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC or via Internet at Cathy.Williams@fcc.gov or PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>; (2) look for the section of the Web page called "Currently Under Review;" (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading; (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box; (5) click the "Submit" button to the right of the "Select Agency" box; and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 750 respondents, 750 responses.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Estimated Time per Response: 1-4 hours.

Total Annual Burden: 855 hours.

Total Annual Costs: \$425,150.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 17, 2005, the Commission released a Second Order on Reconsideration and Further Notice of Proposed Rulemaking, Creation of a Low Power Radio Service, MB Docket No. 99-25 (FCC 05-75). The Further Notice of Proposed Rulemaking ("FNPRM") proposed to permit the assignment or transfer of control of Low Power FM (LPFM) authorizations where there is a change in the governing board of the permittee or licensee or in other situations corresponding to the circumstances described above. This proposed rule was subsequently adopted in a Third Report and Order and Second Further Notice of Proposed Rulemaking, MB Docket No. 99-25 (FCC 07-204) (*Third Report and Order*), released on December 11, 2007.

FCC Form 316 has been revised to encompass the assignment and transfer of control of LPFM authorizations, as proposed in the FNPRM and subsequently adopted in the Third Report and Order, and to reflect the ownership and eligibility restrictions applicable to LPFM permittees and licensees.

Filing of the FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of a corporation holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder; and, in the case of LPFM stations, where there is a voluntary transfer of a controlling interest in the licensee or permittee entity. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

OMB Control Number: 3060-0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

AL-10-001-0221

Congress of the United States

Washington, DC 20515

June 17, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

As you know, the State of Texas has been extremely successful in improving air quality over the past decade, and has been a national leader in reducing emissions and known pollutants. Since 2000, the State has achieved a 22 percent reduction in ozone and a 46 percent decrease in nitrogen oxide (NOx) emissions, compared to an 8 percent reduction in national ozone levels and a 27 percent reduction in national NOx levels between 2000 and 2008. Currently there are no Texas counties in nonattainment for fine particulate matter (PM 2.5) which is one of the pollutants with the greatest impact on human health. Carbon dioxide (CO2) emissions from fossil fuel usage have also fallen by more than almost any other state, and Texas is ranked among the highest in the nation for clean energy jobs and clean energy venture capital investments. Texas has achieved major pollution and emissions reductions while at the same time promoting economic prosperity and job creation despite population growth of nearly 3.5 million over the past decade.

While most would regard the Texas air quality successes as commendable and a model for other states, the Environmental Protection Agency (EPA) has recently threatened to take over the State's delegated Clean Air Act Title V operating permit program. Although air quality permitting under the federal Clean Air Act is delegated to the Texas Commission on Environmental Quality (TCEQ), EPA took the unprecedented step on May 25, 2010, of circumventing TCEQ and notifying a refinery in Texas, which has an operating permit issued by TCEQ, that to continue operations the refinery must obtain a new operating permit directly from your agency. EPA Region 6 has directed the facility to submit a new operating permit application and additional detailed information directly to the EPA not later than September 15, 2010, or be subject to potential EPA or Department of Justice enforcement actions or penalties. According to press reports, EPA's new regional administrator for EPA Region 6 has threatened to federalize operating permits for other major Texas facilities as well.

We are not aware of similar actions by EPA to take over a delegated Title V permitting program from any other state. EPA's actions appear to relate primarily to the agency's objections to TCEQ's longstanding "flexible permitting program" adopted in 1994. That program facilitates emissions reductions at plants and other facility sites by setting overall emissions caps and allowing companies to meet their business needs while demonstrating their compliance with the overall caps and with both state and federal law. This approach gives companies operational flexibility to reduce emissions cost-effectively and efficiently without triggering excessive, unwarranted permitting activities, and regulatory burdens. The program is particularly well suited to Texas where there are many complex facilities, including refineries, chemical, and petrochemical facilities, which may have hundreds or thousands of individual pieces of equipment or individual emissions sources on site, and where additional permitting and regulatory burdens would achieve no net environmental benefit.

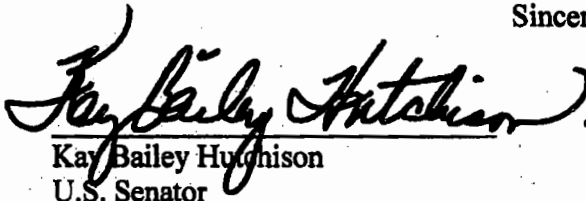
We believe the Texas flexible permitting program is consistent with the provisions of the Clean Air Act and has played a critical role in the significant and continuing success of the Texas air quality program. Mandating individual permitting and pollution technology controls for each piece of equipment or unit that is a source of emissions at a large site would be extraordinarily complicated, expensive, and inefficient, and undermine environmental protection by discouraging appropriate upgrades and operational improvements at those facilities. Such additional regulatory permitting burdens would also result in costs that will be passed on to consumers in the form of higher prices for fuel, electricity, and other goods and services.

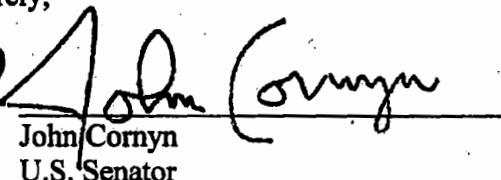
As a practical matter, your agency's actions on May 25, 2010, and EPA threats to take over operating permits at Texas facilities, are putting on hold major new projects (including pollution control projects), stalling the creation of thousands of associated new jobs, and creating substantial regulatory uncertainty for many facilities across the state that directly employ tens of thousands of workers. These facilities are critical not only to the State's economy, but also to the nation because Texas supplies more than one-fifth of the nation's crude oil, refines more than a quarter of the nation's fuel supply, provides more than a quarter of the nation's natural gas (more than any state), and manufactures approximately 60 percent of the chemicals used in the United States.


We understand TCEQ, which in the past has had a cooperative working relationship with EPA, has been participating in ongoing discussions with your agency to address EPA concerns with the flexible permitting and other aspects of the State's air quality program. We are informed TCEQ has provided EPA with detailed and extensive written responses, as well as additional rule proposals, to attempt to resolve specific issues your agency has raised and that TCEQ continues to try to address EPA's evolving issues and concerns.

We do not believe EPA should be setting a precedent to supersede a successful state program that has reduced emissions and improved the air quality. Given Texas' strong record of success, particularly compared to other states with large populations and metropolitan areas, and in view of the regulatory uncertainty and adverse economic and job impacts resulting from EPA recent and threatened permitting actions, we urge EPA to reconsider the permitting action taken on May 25, 2010, and to refrain from any further actions to take over other operating permits in Texas. We further request your assurances that EPA will continue to work collaboratively with TCEQ to resolve EPA's outstanding issues with the Texas air permitting program. Thank you for your attention to this matter and we look forward to your response.

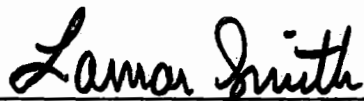
Sincerely,


Kay Bailey Hutchison
U.S. Senator

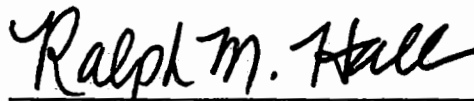

John Cornyn
U.S. Senator


Joe Barton
Member of Congress


Randy Neugebauer
Member of Congress



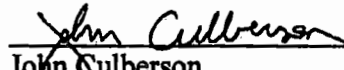
Lamar Smith
Member of Congress



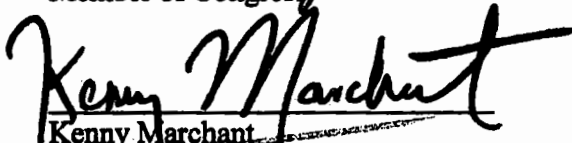
Ralph Hall
Member of Congress



Mike Conaway
Member of Congress



John Culberson
Member of Congress



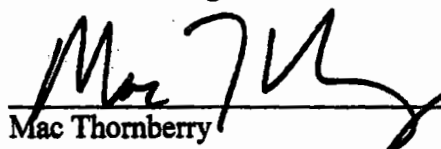
Kenny Marchant
Member of Congress



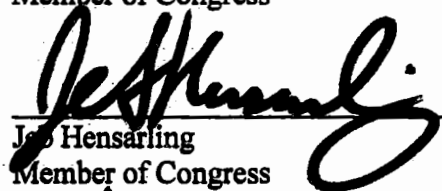
Pete Sessions
Member of Congress



Ted Poe
Member of Congress



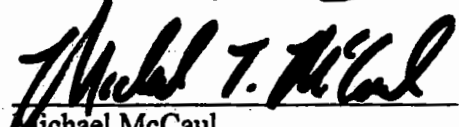
Mac Thornberry
Member of Congress



Joe Hensarling
Member of Congress



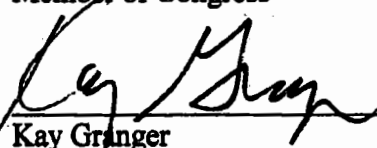
John Carter
Member of Congress



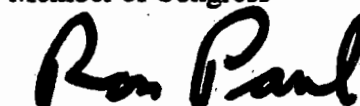
Michael McCaul
Member of Congress



Dr. Michael Burgess
Member of Congress



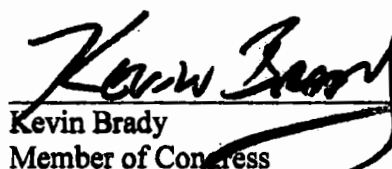
Kay Granger
Member of Congress



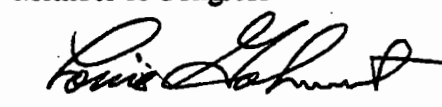
Dr. Ron Paul
Member of Congress



Pete Olson
Member of Congress



Kevin Brady
Member of Congress



Louie Gohmert
Member of Congress



Sam Johnson
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

AUG 4 2010

The Honorable Michael McCaul
House of Representatives
Washington, D.C. 20515

Dear Congressman McCaul:

Thank you for your letter dated June 17, 2010, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding EPA's efforts to enforce the provisions of the Clean Air Act in Texas. Administrator Jackson forwarded your letter to me for reply because Texas is within the jurisdiction of EPA Region 6.

In your letter, you outlined your concerns about EPA's actions as it works with the Texas Commission on Environmental Quality (TCEQ) to ensure that the Texas air permitting program complies with the Clean Air Act. EPA is responsible for guaranteeing that the people of Texas receive the health protection they deserve – the same level of protection established for all Americans in the Clean Air Act. Unfortunately, several TCEQ air permitting rules and practices have contributed to permits that do not provide this guarantee. Local governments and citizens throughout Texas have publicly decried the implementation of the State's air permitting program and the difficulty of enforcing permits issued under it.

This is not a new or partisan issue. In 2002, EPA began formally identifying concerns to the predecessor of the Texas Commission on Environmental Quality (TCEQ) about whether changes to the air permitting program, including the addition of the flexible permit rules, provided the same level of public health protection that is provided by federal law. EPA and the State continued this dialogue for many years without resolution. In September 2007, EPA sent letters putting companies with flexible permits on notice that we believed their permits did not comply with the federal Clean Air Act (see enclosure). On August 25, 2008, the Business Coalition for Clean Air, the Texas Association of Business, and the Texas Oil and Gas Association filed a complaint in federal court seeking a final resolution to this dialogue. This lawsuit resulted in a settlement requiring EPA to take action on numerous Texas air permitting provisions. One such action was the June 30, 2010, final disapproval of the flexible permit program.

In addition to these program actions, on October 30, 2009, EPA began to issue objections to operating permits for major sources of air pollution. The objections were made to permits that relied on flawed regulations and where permits did not satisfy the minimum operating permit requirements contained in prior TCEQ rules approved by EPA. Under the Clean Air Act a

permitting authority has 90 days from the date of an EPA objection to an operating permit to correct that permit. If the correction is not made within the 90-day window, EPA is required to issue or deny the permit. For approximately eight months, TCEQ did not respond to EPA objections. In a letter to EPA dated May 24, 2010, TCEQ's Executive Director wrote, "It seems the only way EPA or TCEQ will be able to understand what is expected to alleviate any Title V [operating permit] programmatic objections is for EPA to issue a Title V permit." He continued, "This will also ensure the timely issuance of permits." It was then that EPA made the difficult decision to begin sending federal permit applications where significant deficiencies had not been corrected. To date, EPA has not issued or revoked a single permit in the State of Texas. We have simply asked three companies to submit permit applications addressing noted deficiencies. We will continue to evaluate whether to send additional permit application requests in the near future.

EPA made these difficult decisions against a backdrop of regular meetings with the State, the regulated community, environmental organizations and community members to discuss program deficiencies and possible resolutions. We believe these meetings have allowed an open dialogue with TCEQ, the regulated community, environmental organizations and community members about our program concerns. The Clean Air Act envisions state control of clean air programs, and we welcome the state's leadership on clean air. TCEQ must exercise its authorized authorities within the framework established by Congress. We cannot overlook state permitting programs that are inconsistent with the Clean Air Act.

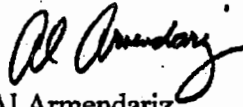
You also wrote that you believe the TCEQ flexible permitting program is consistent with the provisions of the Clear Air Act and has played a critical role in the significant and continuing success of the Texas air quality program. Despite the intended benefits of creating flexibility throughout the air permitting program, several rules have resulted in problems for the public and EPA, including a lack of clarity and practical enforceability of permits. Many of the companies with flexible air permits in Texas also operate in other states. These other states, including ones with heavy industrial activity, have not ignored the minimum protections provided by America's Clean Air Act, and these same companies have continued to operate profitably.

We continue to believe that TCEQ and EPA can work together to find common ground for a permitting program that meets federal requirements, as well as the needs of the public and business community in Texas. We are currently working cooperatively with TCEQ and a number of companies, including oil refiners and petrochemical companies, to begin the process of correcting their permits through submittal of revised permits to the TCEQ. EPA took the initiative to create an open dialogue with industry and will continue to meet with any business seeking to resolve ongoing compliance issues. The result will be state and federally enforceable permits that include clear unit-specific emission limitations, monitoring, recordkeeping and reporting requirements.

Collaboration between TCEQ and EPA has resulted in national environmental successes in the past and we believe it will in the future. We can protect the health of Texans while at the same time promoting economic growth and jobs. Please be assured that we are committed to our continued work with TCEQ, the public and Texas businesses in a spirit of partnership to provide every Texan the health protection they deserve.

In your subsequent letters dated June 29, and 30, 2010, you asked that EPA present a briefing on the issues addressed in this response. We will quickly accommodate this request and schedule a briefing later this month. If you have any further questions please contact me at (214) 665-2100, or your staff may contact Ms. Cynthia Fanning of my staff at (214) 665-2142.

Sincerely yours,



Al Armendariz
Regional Administrator

Enclosure

Identical Letter Sent To:

The Honorable Kay Bailey Hutchison
The Honorable John Cornyn
The Honorable Joe Barton
The Honorable Kevin Brady
The Honorable Michael Burgess, M.D.
The Honorable John Carter
The Honorable Mike Conaway
The Honorable John Culberson
The Honorable Louie Gohmert
The Honorable Kay Granger
The Honorable Ralph Hall

The Honorable Jeb Hensarling
The Honorable Sam Johnson
The Honorable Kenny Marchant
The Honorable Randy Neugebauer
The Honorable Pete Olson
The Honorable Ron Paul, M.D.
The Honorable Ted Poe
The Honorable Pete Sessions
The Honorable Lamar Smith
The Honorable Mac Thornberry

AL-100-2843

Congress of the United States**Washington, DC 20515**

July 29, 2010

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Jackson:

We write to renew our request for information on the EPA Region VI administrator's action with respect to air quality in Texas. On June 17, 2010, House and Senate Texas Republicans sent you a letter in support of the Texas Commission on Environmental Quality's (TCEQ) air permitting program. In that letter, we explained that the Texas flexible permitting program is consistent with the provisions of the Clean Air Act and recommended that the EPA not supersede a successful state program that has reduced emissions and improved air quality. We urged the EPA to reconsider the permitting action taken on May 25, 2010, and to refrain from any further actions taking over operating permits in Texas. We requested a prompt response to our inquiries.

We were therefore surprised to learn that Region VI Administrator Armendariz briefed select Democrat Members of the Texas Delegation yesterday. We assume that this briefing was in response to a June 24, 2010 letter sent to you by Democrat Members of the Texas Delegation on the very same issue addressed in our June 17 letter. The EPA's decision to brief Democrats and not Republicans will not improve dialogue nor will it improve air quality in Texas. Like all Texans, we are extremely concerned that the EPA will impose excessive and unnecessary costs on refiners and other businesses in an arbitrary attempt to supersede TCEQ.

We believe that including Texans of both parties in yesterday's briefing would have been the appropriate response to the June 17 and June 24 letters. We regret that we were not included. As you have still not answered our concerns outlined in our June 17 letter, we again request a briefing on the issues outlined in that letter, attached herewith for your reference.

Sincerely,

Joe Barton

Buzz Sessing TX-32

John Cellman

Louis Hunt

K. H. S. TX-11

Concannon TX-19

Jefferson

Amill TX-2

Kent Brum TX-8

Mac J. K. TX-13

Steve H. TX-24

Sam Johnson TX-3

Rita Olson TX-22

Charles Carter TX-31

J. H. S. TX-26

Logan TX-12

Ralph M. Hall Jr.
Lamar Smith
TX-21

Ron Paul

Michael (M) L.

John Cornyn

JOE BARTON
SIXTH DISTRICT, TEXAS

2109 RAYBURN HOUSE OFFICE BUILDING
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RANKING MEMBER
COMMITTEE ON
ENERGY AND COMMERCE
TELEPHONE: (202) 225-3641

<http://republicans.energycommerce.house.gov>

Congress of the United States
House of Representatives
Washington, DC 20515-4306

FACSIMILE
Cover Sheet

TO: Mr David McIntosh, Associate
Administrator for Congressional
and Intergovernmental Relations
DATE: 7/30/10

FROM:

- | | |
|---|---|
| <input type="checkbox"/> Ron Wright | <input type="checkbox"/> Martie Climer |
| <input type="checkbox"/> Ryan Thompson | <input checked="" type="checkbox"/> Michael Weems |
| <input type="checkbox"/> Julieann Scarborough | <input type="checkbox"/> Sean Brown |
| <input type="checkbox"/> Emmanuel Guillory | <input type="checkbox"/> Nina Shelat |
| <input type="checkbox"/> Sarah Whiting | |

PAGES (Incl. Cover Sheet): 4

Comments:

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6001 INTERSTATE 20 WEST, SUITE 200
RONALD REAGAN MEMORIAL HIGHWAY
ARLINGTON, TX 76017
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1 (877) 263-2833 (6TH DISTRICT ONLY)

CROCKETT OFFICE:

P.O. Box 958
CROCKETT, TX 75835
(936) 544-8488

ENNIS OFFICE:

2106A WEST ENNIS AVENUE
ENNIS, TX 76819
(972) 875-4488



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

AUG 4 2010

The Honorable Michael McCaul
House of Representatives
Washington, D.C. 20515

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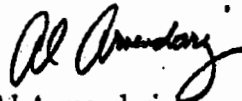
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Sincerely yours,



Al Armendariz
Regional Administrator

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The Honorable Pete Olson
The Honorable Ron Paul, M.D.
The Honorable Ted Poe
The Honorable Pete Sessions
The Honorable Lamar Smith
The Honorable Mac Thornberry